Exhibit I

Guido Saveri (22349) guido@saveri.com
R. Alexander Saveri (173102) rick@saveri.com
Geoffrey C. Rushing (126910) grushing@saveri.com
Cadio Zirpoli (179108) cadio@saveri.com
SAVERI & SAVERI, INC.
706 Sansome Street
San Francisco, CA 94111
Telephone: (415) 217-6810
Facsimile: (415) 217-6813

Interim Lead Counsel for the Direct Purchaser Plaintiffs

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

IN RE: CATHODE RAY TUBE (CRT) ANTITRUST LITIGATION	MASTER FILE NO. 07-cv-5944 SC MDL NO. 1917
This Document Relates to: STUDIO SPECTRUM, INC.	**STUDIO SPECTRUM INC.'S RESPONSES AND OBJECTIONS TO DEFENDANT HITACHI AMERICA, LTD.'S FIRST SET OF INTERROGATORIES**

PROPOUNDING PARTY: HITACHI AMERICA, LTD.

RESPONDING PARTY: STUDIO SPECTRUM, INC.

SET NO.: ONE

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Studio Spectrum, Inc. ("Plaintiff"), by its attorneys, objects and responds to Defendant Hitachi America, Ltd.'s First Set of Interrogatories to the Direct Purchaser Plaintiffs (the "Interrogatories") as follows:

GENERAL OBJECTIONS

Each of the following objections is incorporated by reference into each of the responses herein:

1. Plaintiff and its counsel have not completed their (1) investigation of the facts relating to this case, (2) discovery in this action, or (3) preparation for trial. The following

responses are therefore based upon information known at this time and are provided without prejudice to Plaintiff's right to supplement these responses prior to trial or to produce evidence based on subsequently discovered information. Likewise, Plaintiff's responses are based upon, and therefore limited by, Plaintiff's present knowledge and recollection, and consequently, Plaintiff reserves the right to make any changes in these responses if it appears at any time that inadvertent errors or omissions have been made.

2. Plaintiff generally objects to these Interrogatories, including the Instructions and Definitions, to the extent they purport to enlarge, expand or alter in any way the plain meaning and scope of any interrogatory or to impose any obligations on Plaintiff's responses in excess of those required by the Federal Rules of Civil Procedure. Plaintiff will respond to these Interrogatories in accordance with their understanding of the obligations imposed by the Federal Rules of Civil Procedure.

3. Plaintiff objects to these Interrogatories, including the Instructions and Definitions, to the extent the information sought is protected by the attorney-client privilege, the attorney work product doctrine, or is otherwise privileged and/or immune from discovery. By responding to these Interrogatories, Plaintiff does not waive, intentionally or otherwise, any attorney-client privilege, attorney work-product or any other privilege, immunity or other protection that may be asserted to protect any information from disclosure. Accordingly, any response or production of documents or disclosure of information inconsistent with the foregoing is wholly inadvertent and shall not constitute a waiver of any such privilege, immunity or other applicable protection.

4. Plaintiff objects to these Interrogatories to the extent they fail to state with sufficient particularity the information and categories of information to be provided.

5. Plaintiff objects to these Interrogatories to the extent they request Plaintiff to produce documents outside their possession, custody, or control.

6. Plaintiff objects to these Interrogatories to the extent they are overly broad and unduly burdensome.

7. Plaintiff objects to these Interrogatories to the extent they are vague, ambiguous, redundant, harassing or oppressive.

8. Plaintiff objects to these Interrogatories to the extent they require Plaintiff to draw legal conclusions.

9. Plaintiff objects to these Interrogatories to the extent the information requested is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

10. Plaintiff objects to these Interrogatories to the extent that they, or any portion of them, seek production of any information within the possession, custody, or control of any Defendant, or of publicly available information such that the information is obtainable from some other source that is more convenient, less burdensome or less expensive, or the production of the information will impose undue burden, inconvenience, or expense upon Plaintiff.

11. Plaintiff objects to each and every interrogatory and also to the instructions accompanying them, to the extent they seek to require Plaintiff to produce all information that supports or otherwise relates to specific contentions in this litigation, on the ground that such contention interrogatories are unduly burdensome and premature at this stage of the litigation.

12. Plaintiff objects to these Interrogatories to the extent that they seek information relating to the sales or use of CRT(s) and/or CRT PRODUCT(s) acquired by Plaintiff, or other such downstream data, because such information is not relevant to the claim or defense of any party. *See, e.g., In re Vitamins Antitrust Litig.*, 198 F.R.D. 296, 301 (D.D.C. 2000); *In re Pressure Sensitive Labelstock Antitrust Litig.*, 226 F.R.D. 492, 497-498 (M.D. Pa. 2005). Additionally, information other than that related to direct purchases of CRT Products from the named defendants in this action has been barred by the United States Supreme Court, *Illinois Brick Co. v. Illinois,* 431 U.S. 720 (1977).

13. Plaintiff objects to these Interrogatories to the extent that they seek information that requires expert opinion. Plaintiff is entitled to provide additional evidence that is responsive to one or more of the interrogatories in the form of expert reports at the appropriate time, and no response should be construed to foreclose any such disclosure.

14. Plaintiff reserves the right to modify its allegations based on additional discovery, additional analysis of existing discovery, discovery not yet completed and/or expert discovery, and Plaintiff reserves the right to supplement and/or delete the responses given in light of further

evidence and further analysis of present and subsequently acquired evidence.

15. In addition, in accordance with the Federal Rules of Civil Procedure, Plaintiff reserves the right to introduce evidence not yet identified herein supporting Plaintiff's allegations, including evidence that Plaintiff expects to further develop through the course of discovery and expert analysis.

16. In providing responses to these Interrogatories, Plaintiff reserves all objections as to competency, relevance, materiality, privilege, or admissibility as evidence in any subsequent proceeding in, or trial of, this or any other action for any purpose whatsoever.

17. No incidental or implied admissions are intended in these responses. Plaintiff's response to all or any part of any Interrogatory should not be taken as an admission that: (a) Plaintiff accepts or admits the existence of any fact(s) set forth or assumed by an Interrogatory; or (b) Plaintiff has in its possession, custody or control documents or information responsive to that Interrogatory; or (c) documents or information responsive to that Interrogatory exist. Plaintiff's response to all or any part of an Interrogatory also is not intended to be, and shall not be, a waiver by Plaintiff of all or any part of their objection(s) to that Interrogatory.

18. Plaintiff objects to these Interrogatories to the extent they are duplicative of interrogatories served by other defendants in this litigation. To the extent these Interrogatories seek answers that are duplicative to those requested by other interrogatories that have already been propounded on the direct purchaser class, or served at the same time as these Interrogatories, the direct purchaser plaintiffs will only answer them once.

19. Plaintiff objects to these Interrogatories to the extent that the cumulative requests by all defendants in this litigation exceed the permissible number set forth in the Federal Rules.

RESPONSES

INTERROGATORY NO. I:

IDENTIFY all PERSONS who participated or assisted in the preparation of YOUR responses to these interrogatories.

RESPONSE TO INTERROGATORY NO. 1:

Plaintiff incorporates the General Objections as though fully set forth herein. Subject to,

and without waiving, the foregoing objections, Plaintiff responds as follows:

Ken Buckowski, President of Studio Spectrum, Inc.

Kathy King, Operations Manager and Purchasing Agent

Legal Counsel

INTERROGATORY NO. 2:

Separately identify each CRT that YOU sold during the RELEVANT PERIOD, including without limitation the date and place of sale, the type and manufacturer of each CRT sold, and the IDENTITY of each PERSON involved in the sale and the time period and nature of each PERSON's involvement.

As part of YOUR response, IDENTIFY each DOCUMENT that YOU contend supports YOUR response.

RESPONSE TO INTERROGATORY NO. 2:

Plaintiff incorporates the General Objections as though fully set forth herein. Plaintiff objects to this Interrogatory to the extent it requests information other than that related to direct purchases of CRT Products from the named defendants in this action on the grounds that it is compound, vague and ambiguous, overly broad and unduly burdensome. Plaintiff further objects to this Interrogatory to the extent that it seeks information entirely irrelevant to the issues raised and damages claimed in this case and is not likely to lead to the discovery of admissible evidence. Plaintiff further objects and will not respond to this Interrogatory because it impermissibly calls for downstream information concerning sales of CRTs by Plaintiff and such information is not relevant to the claims or defenses of any party. Plaintiff purchased only CRT Products.

INTERROGATORY NO. 3:

Separately identify each CRT PRODUCT that YOU sold during the RELEVANT PERIOD, including without limitation the date and place of sale, the type and manufacturer of each CRT PRODUCT sold, and the IDENTITY of each PERSON involved in the sale and the time period and nature of each PERSON's involvement.

As part of YOUR response, IDENTIFY each DOCUMENT that YOU contend supports YOUR response.

RESPONSE TO INTERROGATORY NO. 3:

Plaintiff incorporates the General Objections as though fully set forth herein. Plaintiff objects to this Interrogatory to the extent it requests information other than that related to direct purchases of CRT Products from the named defendants in this action on the grounds that it is compound, vague and ambiguous, overly broad and unduly burdensome. Plaintiff further objects to this Interrogatory to the extent that it seeks information entirely irrelevant to the issues raised and damages claimed in this case and is not likely to lead to the discovery of admissible evidence. Plaintiff further objects and will not respond to this Interrogatory because it impermissibly calls for downstream information concerning sales of CRTs by Plaintiff and such information is not relevant to the claims or defenses of any party.

INTERROGATORY NO. 4:

For each sale of a CRT identified in Interrogatory No. 2, state all terms and conditions that were a part of the sale, including without limitation all terms and conditions RELATING TO pricing, taxes, tariffs, duties, freight charges, or any other fees paid by any PERSON in connection with the sale.

As part of YOUR response, IDENTIFY each DOCUMENT that YOU contend supports YOUR response.

RESPONSE TO INTERROGATORY NO. 4:

Plaintiff incorporates the General Objections as though fully set forth herein. Plaintiff objects to this Interrogatory to the extent it requests information other than that related to direct purchases of CRT Products from the named defendants in this action on the grounds that it is compound, vague and ambiguous, overly broad and unduly burdensome. Plaintiff further objects to this Interrogatory to the extent that it seeks information entirely irrelevant to the issues raised and damages claimed in this case and is not likely to lead to the discovery of admissible evidence. Plaintiff further objects and will not respond to this Interrogatory because it impermissibly calls for downstream information concerning sales of CRTs by Plaintiff and such information is not relevant to the claims or defenses of any party. Plaintiff purchased only CRT Products.

INTERROGATORY NO. 5:

For each sale of a CRT PRODUCT identified in Interrogatory No. 3, state all terms and conditions that were a part of the sale, including without limitation all terms and conditions RELATING TO pricing, taxes, tariffs, duties, freight charges, or any other fees paid by any PERSON in connection with the sale.

As part of YOUR response, IDENTIFY each DOCUMENT that YOU contend supports YOUR response.

RESPONSE TO INTERROGATORY NO. 5:

Plaintiff incorporates the General Objections as though fully set forth herein. Plaintiff objects to this Interrogatory to the extent it requests information other than that related to direct purchases of CRT Products from the named defendants in this action on the grounds that it is compound, vague and ambiguous, overly broad and unduly burdensome. Plaintiff further objects to this Interrogatory to the extent that it seeks information entirely irrelevant to the issues raised and damages claimed in this case and is not likely to lead to the discovery of admissible evidence. Plaintiff further objects and will not respond to this Interrogatory because it impermissibly calls for downstream information concerning sales of CRTs by Plaintiff and such information is not relevant to the claims or defenses of any party.

INTERROGATORY NO. 6:

Separately for each DEFENDANT and "co-conspirator" alleged in the COMPLAINT, including without limitation their subsidiaries and affiliates, state for each calendar year of the RELEVANT PERIOD the gross dollar amounts, unit volumes, and types of CRTs YOU acquired or sold.

As part of YOUR response, IDENTIFY each DOCUMENT that YOU contend supports YOUR response.

RESPONSE TO INTERROGATORY NO. 6:

Plaintiff incorporates the General Objections as though fully set forth herein. Plaintiff objects to this Interrogatory to the extent it requests information other than that related to direct purchases of CRT Products from the named defendants in this action on the grounds that it is

compound, vague and ambiguous, overly broad and unduly burdensome. Plaintiff objects to this Interrogatory on the grounds that it seeks information entirely irrelevant to the issues raised and damages claimed in this case and is not likely to lead to the discovery of admissible evidence. Plaintiff further objects and will not respond to this Interrogatory because it calls for downstream information concerning sales of CRT Products by Plaintiff and such information is not relevant to the claims or defenses of any party. Plaintiff further objects to this Interrogatory to the extent that it impermissibly seeks the premature and non-reciprocal disclosure of experts and expert information, or requires Plaintiff to set forth factual analyses, comparative analyses, opinions, or theories that may be the subject of expert testimony. Plaintiff also objects to this Interrogatory to the extent it calls for disclosure of information that is protected by the attorney-client privilege, the work product doctrine, or is otherwise privileged or immune from discovery. Finally, Plaintiff objects to this Interrogatory to the extent it imposes obligations on Plaintiff beyond the scope of the Federal Rules of Civil Procedure 26 and 34 and the applicable Local Rules of the United States District Court for the Northern District of California. Subject to, and without waiving these objections, Plaintiff's purchases of CRT Products from the defendants may be derived from their production of documents. Plaintiff purchased only CRT Products.

INTERROGATORY NO. 7:

Separately for each DEFENDANT and "co-conspirator" alleged in the COMPLAINT, including without limitation their subsidiaries and affiliates, state for each calendar year of the RELEVANT PERIOD the gross dollar amounts, unit volumes, and types of CRT PRODUCTS YOU acquired or sold.

As part of YOUR response, IDENTIFY each DOCUMENT that YOU contend supports YOUR response.

RESPONSE TO INTERROGATORY NO. 7:

Plaintiff incorporates the General Objections as though fully set forth herein. Plaintiff objects to this Interrogatory to the extent it requests information other than that related to direct purchases of CRT Products from the named defendants in this action on the grounds that it is compound, vague and ambiguous, overly broad and unduly burdensome. Plaintiff objects to this

Interrogatory on the grounds that it seeks information entirely irrelevant to the issues raised and damages claimed in this case and is not likely to lead to the discovery of admissible evidence. Plaintiff further objects and will not respond to this Interrogatory because it calls for downstream information concerning sales of CRT Products by Plaintiff and such information is not relevant to the claims or defenses of any party. Plaintiff further objects to this Interrogatory to the extent that it impermissibly seeks the premature and non-reciprocal disclosure of experts and expert information, or requires Plaintiff to set forth factual analyses, comparative analyses, opinions, or theories that may be the subject of expert testimony. Plaintiff also objects to this Interrogatory to the extent it calls for disclosure of information that is protected by the attorney-client privilege, the work product doctrine, or is otherwise privileged or immune from discovery. Finally, Plaintiff objects to this Interrogatory to the extent it imposes obligations on Plaintiff beyond the scope of the Federal Rules of Civil Procedure 26 and 34 and the applicable Local Rules of the United States District Court for the Northern District of California. Subject to, and without waiving these objections, Plaintiff's purchases of CRT Products from the defendants may be derived from their production of documents. *See* Bates Range SS0000001-SS0000013.

INTERROGATORY NO. 8:

IDENTIFY each PERSON with knowledge of YOUR negotiations RELATING TO the terms and conditions for each of YOUR acquisitions or sales of CRTs during the RELEVANT PERIOD.

RESPONSE TO INTERROGATORY NO. 8:

Plaintiff purchased only CRT Products. Plaintiff incorporates the General Objections as though fully set forth herein. Plaintiff objects to this Interrogatory on the grounds that it requests information other than that related to direct purchases of CRT Products from the named defendants in this action on the grounds that it is compound, vague and ambiguous, overly broad and unduly burdensome. Plaintiff objects to this Interrogatory on the grounds that it seeks information entirely irrelevant to the issues raised and damages claimed in this case and is not likely to lead to the discovery of admissible evidence. Plaintiff further objects and will not respond to this Interrogatory because it calls for downstream information concerning sales of CRT

Products by Plaintiff and such information is not relevant to the claims or defenses of any party.

Subject to, and without waiving, the foregoing objections, Plaintiff responds with respect to its acquisition of CRT Products as follows:

Ken Buckowski, President of Studio Spectrum, Inc.

Kathy King, Operations Manager and Purchasing Agent

INTERROGATORY NO. 9:

IDENTIFY each PERSON with knowledge of YOUR negotiations RELATING TO the terms and conditions for each of YOUR acquisitions or sales of CRT PRODUCTS during the RELEVANT PERIOD.

RESPONSE TO INTERROGATORY NO. 9:

Plaintiff incorporates the General Objections as though fully set forth herein. Plaintiff objects to this Interrogatory on the ground that it requests information other than that related to direct purchases of CRT Products from the named defendants in this action on the grounds that it is compound, vague and ambiguous, overly broad and unduly burdensome. Plaintiff objects to this Interrogatory on the ground that it seeks information entirely irrelevant to the issues raised and damages claimed in this case and is not likely to lead to the discovery of admissible evidence. Plaintiff further objects and will not respond to this Interrogatory because it calls for downstream information concerning sales of CRT Products by Plaintiff and such information is not relevant to the claims or defenses of any party.

Subject to, and without waiving, the foregoing objections, Plaintiff responds with respect to its acquisition of CRT Products as follows:

Ken Buckowski, President of Studio Spectrum, Inc.

Kathy King, Operations Manager and Purchasing Agent

INTERROGATORY NO. 10:

IDENTIFY YOUR product specifications for each acquisition or potential acquisition of CRTs during the RELEVANT PERIOD, including without limitation all PERSONS with knowledge of those specifications.

RESPONSE TO INTERROGATORY NO. 10:

Plaintiff incorporates the General Objections as though fully set forth herein. Plaintiff also objects to this Interrogatory on the grounds that it is compound, vague and ambiguous, overly broad and unduly burdensome. Subject to, and without waiving, the foregoing objections, Plaintiff responds as follows:

Plaintiff purchased only CRT Products. Plaintiff did not develop product specifications for cathode ray tubes, because it did not purchase cathode ray tubes as individual components. Instead, Plaintiff purchased manufactured monitors which incorporated cathode ray tubes. Plaintiff integrated these monitors into entire systems built to meet the requirements of Plaintiff's customers. The specifications of these monitors were based on the design of the cases, chassis, power supply, and driving amplifiers, as well as the type of signal required. In addition, Plaintiff's product specifications of these monitors may be derived from its production of documents. *See* Bates Range SS0000001-SS0000013.

INTERROGATORY NO. 11:

IDENTIFY YOUR product specifications for each acquisition or potential acquisition of CRT PRODUCTS during the RELEVANT PERIOD, including without limitation all PERSONS with knowledge of those specifications.

RESPONSE TO INTERROGATORY NO. 11:

Plaintiff incorporates the General Objections as though fully set forth herein. Plaintiff also objects to this Interrogatory on the grounds that it is compound, vague and ambiguous, overly broad and unduly burdensome. Subject to, and without waiving, the foregoing objections, Plaintiff respond as follows:

Plaintiff did not develop product specifications for cathode ray tubes, because it did not purchase cathode ray tubes as individual components. Instead, Plaintiff purchased manufactured monitors which incorporated cathode ray tubes. Plaintiff integrated these monitors into entire systems built to meet the requirements of Plaintiff's customers. The specifications of these monitors were based on the design of the cases, chassis, power supply, and driving amplifiers, as well as the type of signal required. In addition, Plaintiff's product specifications of these monitors

may be derived from its production of documents. *See* Bates Range SS0000001-SS0000013.

INTERROGATORY NO. 12:

Separately, with respect to each CRT that YOU acquired during the RELEVANT PERIOD, state the total dollar amount by which YOU allege YOU were overcharged as a result of the allegations in the Complaint.

As part of YOUR response, IDENTIFY each DOCUMENT that YOU contend supports YOUR response.

RESPONSE TO INTERROGATORY NO. 12:

Plaintiff purchased only CRT Products. Plaintiff incorporates the General Objections as though fully set forth herein. Plaintiff objects to this Interrogatory as a premature contention interrogatory. *See In re Convergent Technologies Securities Litig.*, 108 F.R.D. 328 (N.D. Cal. 1985) ("[t]here is considerable recent authority for the view that the wisest general policy is to defer propounding and answering contention interrogatories until near the end of the discovery period."); *In re Ebay Seller Antitrust Litig.*, No. C07-1882 JF (RS), 2008 WL 5212170 (N.D. Cal. Dec. 11, 2008) ("Courts using their Rule 33(a)(2) discretion generally disfavor contention interrogatories asked before discovery is undertaken."). Discovery has just started. Defendants have not responded to Plaintiff's interrogatories, and Plaintiff has not taken any depositions (and is not permitted to take depositions until November 1, 2010). Moreover, on March 8, 2010, certain Defendants produced to all parties in this litigation, documents that had previously been produced to the Department of Justice in response to a grand jury subpoena. That production contains some of the facts responsive to this Interrogatory. Plaintiff further objects to this Interrogatory to the extent that it impermissibly seeks the premature and non-reciprocal disclosure of experts and expert information, or requires Plaintiff to set forth factual analyses, comparative analyses, opinions, or theories that may be the subject of expert testimony. Plaintiff also objects to this Interrogatory to the extent it calls for disclosure of information that is protected by the attorney-client privilege, the work product doctrine, or is otherwise privileged or immune from discovery. Finally, Plaintiff objects to this Interrogatory to the extent it imposes obligations on Plaintiff beyond the scope of the Federal Rules of Civil Procedure 26 and 34 and the applicable Local

Rules of the United States District Court for the Northern District of California.

INTERROGATORY NO. 13:

Separately, with respect to each CRT PRODUCT that YOU acquired during the RELEVANT PERIOD, state the total dollar amount by which YOU allege YOU were overcharged as a result of the allegations in the Complaint.

As part of YOUR response, IDENTIFY each DOCUMENT that YOU contend supports YOUR response.

RESPONSE TO INTERROGATORY NO. 13:

Plaintiff incorporates the General Objections as though fully set forth herein. Plaintiff objects to this Interrogatory as a premature contention interrogatory. *See In re Convergent Technologies Securities Litig.*, 108 F.R.D. 328 (N.D. Cal. 1985) ("[t]here is considerable recent authority for the view that the wisest general policy is to defer propounding and answering contention interrogatories until near the end of the discovery period."); *In re Ebay Seller Antitrust Litig.*, No. C07-1882 JF (RS), 2008 WL 5212170 (N.D. Cal. Dec. 11, 2008) ("Courts using their Rule 33(a)(2) discretion generally disfavor contention interrogatories asked before discovery is undertaken."). Discovery has just started. Defendants have not responded to Plaintiff's interrogatories, and Plaintiff has not taken any depositions (and is not permitted to take depositions until November 1, 2010). Moreover, on March 8, 2010, certain Defendants produced to all parties in this litigation, documents that had previously been produced to the Department of Justice in response to a grand jury subpoena. That production contains some of the facts responsive to this Interrogatory. Plaintiff further objects to this Interrogatory to the extent that it impermissibly seeks the premature and non-reciprocal disclosure of experts and expert information, or requires Plaintiff to set forth factual analyses, comparative analyses, opinions, or theories that may be the subject of expert testimony. Plaintiff also objects to this Interrogatory to the extent it calls for disclosure of information that is protected by the attorney-client privilege, the work product doctrine, or is otherwise privileged or immune from discovery. Finally, Plaintiff objects to this Interrogatory to the extent it imposes obligations on Plaintiffs beyond the scope of the Federal Rules of Civil Procedure 26 and 34 and the applicable Local Rules of the United States

District Court for the Northern District of California.

DATED: July 7, 2010

By: /s/ Guido Saveri

SAVERI & SAVERI, INC.
706 Sansome Street
San Francisco, CA 94111
Telephone: (415) 217-6810
Facsimile: (415) 217-6813

Interim Lead Counsel for the Direct Purchaser Plaintiffs

VERIFICATION

I, Ken Buckowski, am President of Studio Spectrum, Inc. I do hereby state, under penalty of perjury under the laws of the United States, that the responses contained in Plaintiff Studio Spectrum, Inc.'s Responses and Objections to Defendant Hitachi America Ltd.'s First Set of Interrogatories are true and correct to the best of my knowledge.

Executed on July 7, 2010.

Ken Buckowski

Exhibit J

In The Matter Of:

CRAGO, INC., et al.
v.
CHUNGHWA PICTURE TUBES, LTD., et al.

MOTION HEARING
May 26, 2011

MERRILL CORPORATION
LegaLink, Inc.
135 Main Street
4th Floor
San Francisco, CA 94105
Phone: 415.357.4300
Fax: 415.357.4301

JUDICIAL ARBITRATION AND MEDIATION SERVICES

Before: Charles A. Legge, Judge (Ret.)

--o0o--

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

--OOO--

IN RE: CATHODE RAY TUBE (CRI) ANTITRUST LITIGATION,

No. 08-5944 SC.
MDL No. 1917
JAMS No. 1100054618

CRAGO, INC., et al.,

Plaintiffs,

vs.

CHUNGHWA PICTURE TUBES, LTD., et al.

Defendants.

THIS DOCUMENT RELATES TO ALL CASES

MOTION HEARING

Thursday, May 26, 2011

Two Embarcadero, Suite 1500

San Francisco, CA

REPORTED BY: COREY W. ANDERSON, CSR 4096 (435627)

A P P E A R A N C E S

FOR THE DIRECT PURCHASER PLAINTIFFS:

SAVERI & SAVERI
Attorneys at Law
GUIDO SAVERI, Esq.
GEOFFREY C. RUSHING, Esq.
R. ALEXANDER SAVERI, Esq.
706 Sansome Street
San Francisco, California 94111
415.217.6810
gsaveri@saveri.com

and

PEARSON SIMON WARSHAW PENNY LLP
Attorneys at Law
BRUCE L. SIMON, Esq.
AARON M. SHEANIN, Esq.
44 Montgomery Street, Suite 2450
San Francisco, California 94104
415.433.9000
bsimon@pswplaw.com

and

HAUSFELD LLP
Attorneys at Law
MICHAEL P. LEHMANN, Esq.
44 Montgomery Street, Suite 3400
San Francisco, California 94104
415.633.1908
mlehmann@hausfeldllp.com

and

FOR THE DIRECT PURCHASER PLAINTIFFS:

COTCHETT, PITRE & McCARTHY LLP
STEVEN N. WILLIAMS, Esq.
840 Malcolm Road
Burlingame, California 94010
650-697-6000
swilliams@cpmlegal.com

A P P E A R A N C E S (Continued)

and

FOR THE INDIRECT PURCHASER PLAINTIFFS:

ZELLE HOFMANN VOELBEL & MASON LLP
Attorneys at Law
CRAIG C. CORBITT, Esq.
PATRICK B. CLAYTON, Esq.
44 Montgomery Street, Suite 3400
San Francisco, California 94104
415.633.1905
ccorbitt@zelle.com

and

FOR THE DEFENDANTS PANASONIC CORPORATION, PANASONIC NORTH AMERICA, MTPD:

DEWEY LeBOEUF
Attorneys at Law
JEFFREY L. KESSLER, Esq.
MOLLY M. DONOVAN, Esq.
1301 Avenue of the Americas
New York, New York 10019-6092
213.259.7349
jkessler@dl.com

and

WEIL, GOTSHAL & MANGES
Attorneys at Law
ADAM C. HEMLOCK, Esq.
767 Fifth Avenue
New York, New York 10153-0119
212.310.8000

A P P E A R A N C E S (Continued)

and

FOR THE DEFENDANT HITACHI DS:

MORGAN LEWIS & BOCKIUS LLP
Attorneys at Law
SCOTT A. STEMPEL, Esq.
1111 Pennsylvania Avenue, NW
Washington, DC 20004
202.739.5211
sstempel@morganlewis.com

MORGAN LEWIS & BOCKIUS LLP
Attorneys at Law
MICHELLE PARK CHIU, Esq.
One Market, Spear Street Tower
San Francisco, California 94105
415.442.1140
mchiu@morganlewis.com

and

FOR THE DEFENDANT SAMSUNG SDI:

SHEPPARD MULLIN RICHTER & HAMPTON LLP
Attorneys at Law
MICHAEL W. SCARBOROUGH, Esq.
JAMES L. McGINNIS, Esq.
Four Embarcadero Center, 17th Floor
San Francisco, California 94111
415.434.9100
mscarborough@sheppardmullin.com

and

FOR THE DEFENDANT LGE, LGUSA, LGETT:

ARNOLD & PORTER LLP
ERIC SHAPLAND, Esq.
One Embarcadero Center, 22nd Floor
San Francisco, California 94111
415.356-3051
eric.shepland@aporter.com

A P P E A R A N C E S (Continued)

ARNOLD & PORTER LLP
BETH H. PARKER, Esq.
One Embarcadero Center, 22nd Floor
San Francisco, California 94111
415.356-3051
beth.parker@aporter.com

and

FOR THE DEFENDANT SAMSUNG ELECTRONICS CORPORATION, SAMSUNG ELECTRONICS OF AMERICA:

O'MELVENY & MYERS
Attorneys at Law
IAN SIMMONS, Esq.
BEN BRADSHAW, Esq.
PATRICK HEIN, Esq.
Two Embarcadero Center, 28th Floor
San Francisco, California 94111-3823
415.984.8700
isimmons@omm.com

--oOo--

SAN FRANCISCO, CALIFORNIA

THURSDAY, May 26, 2011

9:54 A.M.

--o0o--

P R O C E E D I N G S

THE COURT: All right. Let's get started.

Welcome back. I gather from the full attendance here this morning that you all attach about as much significance to this motion, to these motions as I do. So I'm glad to have you all.

Now, we do have most everybody here. We are not using the star phone this morning for two reasons: One is it's broken; and the second is that even if it weren't broken, I wouldn't know how to use it. So I think we are good enough on this phone for the number of people who will be here.

Most all of you have been here before, so you know where the washrooms are, where the coffee is. And we do have two rooms available down the hallway for your use as caucus rooms.

If you want to use your computers in here, we are Wi-Fied. To get through the code to get to our Wi-Fi, Sarah's written it on the board up there. The magic word is "resolution," so that's what you have got to type in to get through the process into our Wi-Fi

system.

If you want to talk with a podium this morning, if you are more comfortable standing up, you can get the podium that's right beside me here and behind me and put it at your desk when you speak.

I think the court reporter has most of your names. I see he has a flock of cards here. So because of the number, instead of going around and asking you now for your names, when you rise to talk, would you please state your name and if at the end of the proceedings you want to show your appearance here, but haven't spoken, then be sure you give your card to the court reporter.

Okay. Now, we are here for two motions, both of which concern the by now familiar subject of finished products. I believe that the motion has at least preliminarily and I hope finally resolved the definition of what the plaintiffs are alleging by way of a finished products conspiracy, and I'm taking this from page 3 of their brief in this motion as being a single, unitary conspiracy that encompassed both CRTs and the finished products containing them.

So it's not two conspiracies, and it's not just a conspiracy of CRTs which affected finished products, but is a conspiracy of both, CRTs and the

finished products.

Now, as I said, I believe the motion, particularly the Rule 11 motion, is important to all of us in this case, and all of you and your clients. So I'm not going to cut anybody off in this argument today unless things are getting just too repetitive, and then I'll exercise the prerogatives of the Chair.

I have done the reading. Have I read every single page of all these exhibits? No. But I have referred the ones, read the ones that you referred to me that I thought were important.

So let me give us just a little bit of guidance, and this is not by way of cutting you off or restricting you from arguing whatever it is you want to argue, but the particular things that I am concerned about as I have done the reading.

One is the legal standard for a Rule 11 decision. I read the two older cases, Townsend and Unioil, I believe are the two, and I read Keegan. And I am very, I don't know what to say about Keegan. I find it very confusing. To me its language is really contrary to the rule. But it purports to state a rule.

And I am particularly concerned about its language that in deciding a Rule 11 motion a judge will take into consideration not just the evidence that was

there at the time the pleading was filed, but evidence that comes in somehow somewhere later. I find that principle staggering, to put it bluntly. But there it is. There it is.

Now, plaintiffs, when you argue, I appreciate with the flow of your argument that at some point in your argument point to me where you believe there is actual evidence of an agreement, direct evidence of an agreement among the defendants to fix the prices of the alleged products.

Now, if you haven't got that, if you think that really what instead you are arguing is inferences and conclusions to be drawn from the evidence you have, well, that's okay, that's okay, let me know that please, because I am still searching for the killer piece of evidence that was in the record that you had before the complaint was filed.

The structure of the industry has been argued. And I at first thought that this is kind of a slam dunk for the plaintiffs, because if we have an industry here where the CRTs are the most important, biggest, most expensive part of the finished products, the TV sets, the monitors, it ought to be pretty clear that certainly the price of the biggest component affects, I'm going to use that word artfully, affects the price of the

finished products from which one might draw an inference or conclusion that any discussion of setting prices on CRTs had to necessarily include fixing prices on the finished products.

But as I read the evidence you folks have given to me, I'm really not sure that's true. Seems to me at least in some that I have been reading that the causation may work the other way, that the prices that have been established somehow, somewhere, on the TV sets and the monitors were really driving what price increases could be made on the CRTs, that in setting CRT prices the discussions were concerned with running up against a ceiling, but from the TVs and the monitors, if they couldn't raise the internal CRT prices without running against, up against that ceiling above which they didn't feel a television set or a monitor could be marketed.

So I just offer those comments on the structure of the industry, just to let you know what my thinking is about it, then obviously indicating a certain degree of uncertainty.

And defendants, when you come to argue, of course, argue what you want to argue. But I'm particularly interested in your focusing on page 12 of plaintiffs' arguments, page 12 and following. They say

that you admit certain things. I don't know whether you do or not and whether there are just language differences here. But I wish you would focus on that and tell me what you think.

Okay. That's the only guidance I can give you at the moment. And so Mr. Kessler, this is your motion, so I'll give it to you first. Do you want to speak where you are from here or do you want to bring the podium over to speak from, whether -- whichever way you are comfortable.

MR. KESSLER: Your Honor, I'll -- I don't need the podium.

THE COURT: Okay.

MR. KESSLER: I am happy to stand if your Honor would like.

THE COURT: No, no.

MR. KESSLER: I am happy to sit if your Honor would like. I want to do whatever is most respectful in this situation.

THE COURT: Don't worry about respect. Just worry about clarity.

MR. KESSLER: I'll just sit down, if that's okay.

THE COURT: Okay.

MR. KESSLER: I can reach all my papers, I

don't have to bring them over the podium, do that.

THE COURT: Okay.

MR. KESSLER: First of all, good morning, your Honor. Jeffrey Kessler, for the purposes of the record. I represent the Panasonic defendants on this motion. I am also arguing on behalf of the Hitachi defendants who have joined this motion, and I am also arguing on behalf of the two Samsung entities who have joined into this motion.

Your Honor, let me start out by saying that our clients, all of the clients in this motion, were very --

THE COURT: Pardon me. Pardon me. LGE is not going to be speaking, they have simply sent their letter and that's as far as they are going to go today?

MR. KESSLER: As far as I know, your Honor.

THE COURT: Okay. Anybody here representing LGE?

MR. SHAPLAND: Here, Eric Shapland on behalf of LGE.

THE COURT: Do you plan on speaking, or are you just --

MR. SHAPLAND: To the extent that issues raised in my letter become relevant and you would like to ask questions about it --

THE COURT: Okay.

MR. SHAPLAND: I am prepared to answer.

THE COURT: Okay.

Go ahead. I'm sorry.

MR. KESSLER: Your Honor, the -- the companies who joined into this Rule 11 motion did so with great reluctance and did not do so lightly. It would have been our preference, our strong preference to have been able to work out this issue with the plaintiffs, because there are some things we are not challenging on this motion.

Not that we admit, your Honor, that these things happened. So that's wrong. Since we obviously don't admit that there was an agreement regarding tubes. Okay, to the extent that plaintiffs have used language like that, no, we make no such admissions.

But on this motion, we are not challenging under Rule 11 an allegation of a conspiracy involving cathode ray tubes, we are not challenging that on this motion, and we are not challenging an allegation that a conspiracy involving cathode ray tubes had an effect on the prices of finished products.

And in fact, we have resolved this matter with the indirect plaintiffs. The indirect plaintiffs have now withdrawn by stipulation all allegations of a

unitary conspiracy involving both CRTs and finished products, they have withdrawn all allegations that there was any conspiracy involving finished products, and they have agreed to pursue their claims simply against an allegation of a conspiracy involving tubes with a claim that it had an effect on finished products. And we have no motion against that pending.

Again, I certainly want to make it clear we don't admit to any such conspiracy.

THE COURT: All right.

MR. KESSLER: And no one would do that.

We tried, your Honor, to explore this through discovery. And so rather than initially file a Rule 11 motion at the beginning or to do that, we said let's find out what did the plaintiffs have as a basis for alleging this conspiracy which we now understand, your Honor, is a unitary conspiracy affecting both.

I think there was a lot of confusion, I agree with your Honor, where there was two separate ones or alternatively a separate in the unitary, but now the direct plaintiffs I believe have limited their claim to a unitary conspiracy claim. At least as I understand their papers, the same way you read --

THE COURT: Oh, that's the way I understand it.

MR. KESSLER: Same way you read the papers.

THE COURT: That's why I sort of read from it was I talking earlier.

MR. KESSLER: Right.

THE COURT: Because I think that's the definition we have got to use.

MR. KESSLER: Yes. I think that's the only definition we can use right now.

So we tried to find out what is the basis for that. So we issued interrogatories, we issued document requests. Your Honor will recall the plaintiffs did not want to add to that. We had to have a proceeding before your Honor. Your Honor ruled it was important to get this information, both because of the possibility this might lead to a Rule 11 motion, as it has, and just to understand the scope of the claims for how this case is going to be run.

So why do we conclude that we had to file this motion, reluctantly? The reason we came to this conclusion is because by injecting a now unitary conspiracy claim that also involves finished products, the plaintiffs have vastly expanded the scope of this case, we believe without any basis to do so, and this is true, your Honor, under an objective test or under a subjective test for Rule 11.

So while I share some of your confusion about the Keegan case which seems to be, in its focus on looking at material today seems to be inconsistent with the language of the rule, as well as the re-hearing en banc and Townsend, which should govern the Ninth Circuit since that was a rehearing en banc, I don't think one panel can change the standard that was set forth in Townsend, but for the purposes of this motion it doesn't matter.

And the reason it doesn't matter is that we believe -- and I'll go through this -- what the record now shows is there was no subjective basis, there was no objective basis, and it doesn't matter whether you look at the evidence at the time they filed the complaint or anything else plaintiffs want to point to since that time. There still is to this moment as we are sitting here nothing to suggest that there is any basis to allege a conspiracy objectively that would extend beyond the tubes.

And I'll explain why.

THE COURT: But if the Ninth Circuit law is that subsequent information can be used in the inquiry, doesn't it follow from that that I have to give them discovery rights before entertaining this motion?

MR. KESSLER: Your Honor, that can't be the

law in that regard, and I'll explain why.

The Ninth Circuit has also held that if you wait until summary judgment which would be the end of the period, says to then move for Rule 11 back at the time of the complaint, you have waited too long, because you haven't given the plaintiffs a chance to withdraw the claims and undo all the injury.

In other words, the injury where we are -- we are incurring has been -- what has already been very large expense costs of having to both defend and prepare to defend against a claim that shouldn't be in the case.

Okay. If the Ninth Circuit meant that you have to wait 'til the end of discovery, okay, and then it turns out let's say at the end of discovery we are right, there is nothing to support this claim, that would mean I would be asking for -- and I have no intention of wanting to get into this position -- millions of dollars in sanctions, because it will have taken me through all of the discovery that shouldn't have been in the case in the first place, it would be a Rule 11 violation at that time, the injury would occur all the way back to the beginning of the case.

So it just utterly makes no sense to interpret that that's what Keegan meant. And it would defeat the purposes of Rule 11 as set forth in the rule.

If you look at the notes to Rule 11 and the history, why was the rule passed? The rule was passed very simply for the following reason. Rule 12 as your Honor knows takes a liberal view. It says if you put an allegation in the complaint, says, and you have to a assume at that time that the allegations are true, you have to give the plaintiffs the benefit of all inferences on a Rule 12 motion.

So that potentially means that if you put in an allegation, whether it's true or not, you can open the door to massive discovery, years of litigation, enormous expense, simply because you have to assume the allegations are going to be true, says then you have to give all the inferences to the plaintiffs.

Rule 11 was put in and then modified by the drafters to put a reasonable check on that effect. And the reasonable check was okay, you have to at least have a reasonable basis, some basis for putting in the allegations you are making. Okay. And you know, so it's a very logical rule, you know, to prevent frankly federal court litigation from going wild.

Because think of the Ninth Circuit's rule the other way. It could be that a lawyer would just put in the most frivolous allegations in a complaint. I'm talking let's say far more frivolous than anything we

are imagining here. Okay. The most frivolous. And the rule would be okay, they are entitled to go to all discovery, the case goes forward, there is nothing here, it's completely frivolous, you have to assume that they are true, and then only at the end do you then get Rule 11 sanctions after the case has been disrupted in the courts. It makes no sense to understand that.

So I think you have to view Keegan as basically being not intending to state that the rule is you give plaintiffs, you know, discovery to find out whether there was a basis for their claims or not.

In fact, if that were true, Rule 11 wouldn't do anything beyond Rule 12. In other words, Rule 12 says you give plaintiffs discovery to decide if they can support a claim and then the remedy is summary judgment. And that's really plaintiffs' position.

If you look at plaintiffs' position in the various papers, what they are really saying is they claim well, we are making a hidden motion to dismiss, so you should treat it as a motion to dismiss, and they are entitled to discovery and our remedy is summary judgment.

Well, with all due respect, Rule 11 has independent life. And I think the Ninth Circuit's made that clear in Townsend. It's also made it clear if you

look in the In Re Biala case which we cited as well, a Ninth Circuit case. What has to be -- and I'm willing to go and objectively reasonable, I don't have a problem with that, so that it's not just the -- what I think Keegan was focusing on. If I may, Keegan was focusing on well, if there was information at the time in the complaint, but the plaintiffs just did a poor job investigating, it's not enough they did a poor job investigating if -- you know, but the information was there. Okay. That's what I think Keegan was saying, not that you should allow a fishing evidence of discovery and let's see what happens a year and a half from now whether they had a basis.

So if they missed something somehow from a poor investigation, but they found it, say look, here it is, it existed at the time of the complaint, I have got it, Keegan was a little troubled by that in terms of doing it because they have now found the basis for the case.

But what I'm saying here, your Honor, is that this moment, they can't mean you have to wait further. It was Keegan just looked at the time of the motion, it didn't say wait 'til later in the case. Okay.

Right now with this motion there is only the following, and it hasn't changed. Number one, and most

importantly, because this is mostly what they rely on, is did Chunghwa proffer or the Chunghwa documents, in other words, I don't care which because it doesn't matter, they have now put in some of the documents themselves which they didn't have at the time of the complaint, but I am willing to look at the Chunghwa documents themselves because they are no different than what the proffer could have been.

And what those documents reveal is exactly what Chunghwa stated in its request, in its answers to the request for admission. Chunghwa, which is only a tubes company, so it does not make a single finished product, said "I have no information," that would be based on all their documents and all their witnesses, "I have no information of any conspiracy that would be to fix the prices of finished products." Chunghwa just doesn't know that.

And if you look at their documents, that's correct. What the documents that plaintiffs have cited show -- and we have looked at all the Chunghwa documents, and you could presume, your Honor, plaintiffs picked out the ones they thought were best, so let's assume, you know, that's what the best is, what the best documents show is that at some meetings -- of tube manufacturers there was the discussion your Honor

highlighted, which is gee, what's going on in -- in television prices, because are we really going to be able to ask customers to absorb an increase in tube prices to pay us a higher price if their TV prices, which it was clear by those documents the two people had no control over, if their TV prices are going down. What they were looking at is they were observing the TV market and saying gee, our customers' TV prices are going down, how can we justify, do we really think that they will be able to pay us for this. So it is exactly what your Honor thought that's what those documents say.

Now, could that be an objectively reasonable basis for suggesting that the tube companies were engaged in a conspiracy to fix the prices of the televisions? It's just the opposite. It shows there was no control or act by the tube companies over the price of televisions or monitors, and they just had to be aware of what that was because it was a barrier to what they could get the customers to pay.

And this goes, your Honor, to the structural issue you raised. And plaintiffs have been very clever about this. They keep talking about how they examined the structure of the industry and the structure of the industry supports the existence of this agreement.

The truth is, your Honor, when you read the

complaints, the only industry structure they discuss is the structure of the tube industry. And yes, it is correct, there were a small number of tube manufacturers, they make various allegations about that.

There are no allegations about the structure of the television and the monitor industry. And they wouldn't rely on such allegations. Why? Because many of the dominant sellers in that industry are not alleged to have anything to do with this.

So for example, there is no allegation that Sony television had anything to do with this. There is no allegation that Sharp television had anything to do with this. There is no allegation that Apple Computer, HP, Dell, Lenovo, any of the computer companies who made the monitor screens had anything at all to do with this.

So what the structure allegations were were again just about the tubes. And what the facts are, if you want to talk about the facts now, and they can't deny these facts, is that there are the market shares in the finished products are significantly held by people, says who are not alleged to be part of this at all, which is exactly why when you look at that document they are saying well, television prices may not support this going down. Well, that's because if Sony says, and Sharp and others are reducing television prices which

everyone has to meet in competition in the television market, including, for example, they say well, some of our companies are affiliated, yes, Panasonic had a television company, and it had a separate affiliated company involved in CRTs, but its television company had to compete with Sony and Sharp and others, and if TV prices are going down, they have to meet that competition.

So again, it's the idea that you could have a unitary conspiracy simply by saying it to expand the case, simply because there was a handful of documents that mentioned the prices of TVs as being a constraint on what the tube companies could charge can't possibly be a basis for this.

Now, what else do they cite besides Chunghwa and the market facts? Well, the only other thing they cite is the various government investigations and the indictments.

Now, first, let me say I agree with plaintiffs, they are not limited in their claims to what governments charge. That's not our argument. Our argument is they have said this is what they relied upon.

So if they have chosen to say that's what they are relying upon, it can only support what it is about.

That's the point.

And when you look at all the government claims, all the indictments, everything they cite, whether it's the United States or whether it's Europe or whether it's Japan, whatever they have cited, one thing is consistent. It's only about tubes. The only reference made that they claim is a reference to finished products is an impact reference, which is then in one of the statements -- one of the papers by the Department of Justice in one of the pleadings says that this had an impact, says on American consumers suggesting those consumers could be people who bought the finished products as well.

Well, again, that's impact. If you read the allegations of the government in all those documents about the agreements, the agreements are only about either CDTs, in some cases it's only CDTs, sometimes it's CPTs, some cases there may be claims of both in some countries, but it's never, is never once finished products.

So your Honor, what we believe is the case is that there is a Rule 11 is a rule that has a meaning. It can't be it has no meaning. Taking the most extreme liberal view of the rule, even looking at Keegan, the most it could mean, the most it could mean in their

favor is that you look at it and see is there an objective basis now at this moment, whether I believe the proper rule is at the time of the complaint because that's what the rule seems to say and the notes seem to say, that's my view is the proper rule, I want to be clear. The proper rule is the time of the complaint.

But let's assume for the moment it's now, either then or now, at this moment. The only evidence they can present to you is what they presented here. And what they presented here does not provide an objective basis for saying the conspiracy extends, the alleged conspiracy extends beyond the tubes that they identify.

Now, your Honor, a few more words about this. First of all, your Honor asked me, you know, to focus in particular on the admissions they allege on page 1. So I guess to make the record very clear, that defendants do not admit that they attended conspiratorial meetings during which the prices of CRT tubes were discussed and agreed upon. We do not admit that. They know from our answers that we deny that. Okay.

Were there meetings? Yes. Do we admit that there were prices fixed at those meetings? No. That's what that case is about. Okay.

They say we admit all but a few of the alleged

conspirators, including all moving defendants who attended these meetings, manufactured finished products as well as CRT tubes. No, we don't admit that.

So for example, the Samsung entity who is here says only made finished products. Okay. My companies that I represent, one of them was a joint venture for Toshiba over some of this period of time which made tubes, and another one of my companies made televisions.

When they say it was part of a vertically integrated corporate family and admitting vertical integration of conspirators, no, we don't admit that the vertical integration has anything to do with a conspiracy. There was some vertical integration by some of the defendants here, and it's very well established, vertical integration alone couldn't be evidence of a conspiracy at all.

The third point they make is the effects on finished product prices and other aspects of the finished product market or the prices agreed upon by, for CRTs were discussed at conspiratorial meetings, admitting that conspirators considered where the possible CRT price increases were going to be viable based on the finished product prices."

No, we do not admit three as written. We don't admit there was any conspiracy, we don't admit

that there were output restrictions agreed upon for CRTs. All of these are loaded statements that there is no basis --

THE COURT: No, no, I'm focusing on the distinction --

MR. KESSLER: -- okay. With respect to this.

THE COURT: The distinction between finished products and CRTs.

MR. KESSLER: Okay.

I guess what I would say we admit, we admit that the documents they identified from Chunghwa show that there -- if those documents were -- assuming them to be true, okay, which I don't have evidence, I don't have foundation or anything else, but if they were true, indicate as your Honor observed that there was some discussion that the competition in televisions would be a limitation on what tube prices could be charged, which is the opposite of the unitary conspiracy.

I admit that's what those documents appear to say, based on the translation that's there. I can't verify that because, you know, they are not my documents, I wasn't at those meetings. But that is what those documents appear to say, that TV prices say limitation because there is no agreement about TV prices, and tube companies have no ability to control TV

prices. That's what at least those few documents would seem to indicate.

And obviously I don't agree to No. 4, that the agreements reached at these meetings were expected to, and did affect, the prices of the finished products. All we are saying, your Honor, is that we are not challenging on Rule 11, want to be very clear that they have stated an allegation against tubes which they claim affect it.

I think, your Honor, it may very well turn out that anything involving tubes had no effect on televisions because the television market was too competitive, okay, and that it was competition in the television market or in the monitor market.

So no, we do not admit that. So basically we don't admit any of them with respect to that. Just want the record to be very clear about that.

At bottom, your Honor, and I think I'm going to be quiet and let the plaintiffs respond, what they are doing is speculating. Their whole thing is speculation. Says well, it says if we have enough to allege a conspiracy about tubes, says they might have agreed about televisions or monitors because at least some of them were in this.

And by the way, my company, you know, we don't

make monitors, we make televisions. That's another whole problem about this. They try to lump it all together. They are completely different products. Okay. We -- so we are not making any monitors, you know, and they don't want to distinguish that either.

But putting -- they are really two different things, just as CDTs are different from CPTs. You know, they are for two different uses.

But they are purely speculating, just like they say well, if somebody is in the LCD case -- and by the way, Panasonic is not a defendant in the LCD case, but they lump everybody together. If someone is in the LCD case, that factor in that case must mean there is a basis to allege that they fixed finished products with television and monitors? I don't think so, your Honor. There is no logic about that. It's pure speculation.

And what are the consequences? The consequences are if we don't get these allegations out of this case, one, I have to hire experts to do work to study an alleged conspiracy that's unitary involving televisions and end products at great expense and work to study that when it's going to have no relevance to this case.

You are going to have to hear class action certification motions that are going to be a total

nightmare because it's not going to be clear, is this limited to tube purchasers? No, it's -- I'm talking about in the direct case now. On the direct case. Says are the purchasers of TVs in the direct case or the indirect case, are we looking at effect or are we looking at conspiracy? What is the claim that we are going to be fighting on that class certification motion? It would be impossible to discern.

They want to do discovery, as you'll hear, where we have to go out not to -- and I want to be clear about this, we have no problem producing documents about CPTs, as we have agreed to do. And if it says something about televisions on those documents, we are not going to strike it.

So if as they are speculating there is some evidence at a discussion of -- of a tube there was some mention of televisions, they'll get it, because we are not going to redact the document. It will be there just like there is some mentions on televisions in the few Chunghwa documents they pointed out to you.

But what this discovery fight is about, do we have to go to separate companies that sold televisions? And if they had any meeting, says with another company who sold televisions, so for example, they buy and sell products to each other, they go to trade associations,

they do joint ventures, they attend government standard setting meetings? We have to go through thousands, millions of those e-mails, reviewing them, many of which are in multiple languages, Japanese, Chinese, Korean, whatever it is, to figure out what to produce in the case when there is no basis for this allegation? The burdens are gigantic for us, the burdens are gigantic for you, they make the case unmanageable.

This is exactly what we believe was the whole point of Rule 11. If Rule 11 doesn't allow relief here, then it really is meaningless for these -- in terms of as a gatekeeper on having a basis for allegations in a complaint. It makes it meaningless. It would be you only can look at Rule 11 at the end of the case when you are in summary judgment, which makes absolutely no sense at all the way that rule is structured.

And I do not believe that's what Keegan meant about that. And I don't think it could mean that in light of Townsend says in the en banc decision of the Ninth Circuit.

Finally, on relief, your Honor, your Honor has -- the one thing I think everyone agrees, you have enormous discretion under Rule 11 to decide what's the appropriate relief. All the cases say that. We believe here the most important, appropriate relief is to strike

the allegations and basically just put the direct purchasers in the same position as the indirect. That's all we are asking. The case will go on, case will go on. Massive discovery still going to go on. But it's plenty massive just limited to the allegations of a tube conspiracy, and we don't dispute they are entitled to discovery of the effect of a -- of an alleged tube conspiracy on the prices of TVs.

So no one is saying they can't do effect discovery. But the conspiracy allegations should be stricken so that the complaint is limited just as the indirects have agreed.

We have also asked your Honor for monetary relief, which we believe is appropriate. If your Honor is inclined to consider both the forms of relief, what we would do is put in a fee request, a reasonable fee request, which would focus, your Honor, at this point we believe on this motion practice and the discovery motion practice which related to discovering this. That's what I believe at least would be the most appropriate way to, you know, to narrow to date.

Because the big expense that we are going to incur if we have to defend these finished products claims that don't belong here is about to begin now. You know, it will come up on the motion your Honor is

going to hear immediately after this. You know, that's when the huge expense is going to occur. Right now we have the opportunity to end this at an appropriate time.

Thank you, your Honor. Unless you have any questions, I think I'll stop at this time.

THE COURT: All right. Does any other defense counsel wish to speak?

MR. SIMMONS: Just in reply, your Honor. Ian Simmons for Samsung Electronics Corporation, Samsung Electronics of America, your Honor.

I join, we join in everything Mr. Kessler has said. Just want to amplify briefly a couple of points.

The first is I think as the reply brief notes, you want to bear in mind what is the standard for a conspiracy. The supreme Court is explicit about this, and unambiguous in the Monsanto case, when it said a conspiracy is a conscious commitment designed to achieve an unlawful objective.

When you take that standard back to this flurry of meetings that the plaintiffs like to point to, I think tying that standard to what Mr. Kessler says, these are meetings about two manufactures, and what can they do on tubes, if anything, what effect does that have on the finished products.

These are not meetings, not emphatically

meetings evincing a conscious commitment to conspire on finished products. And for good reason. Most of the players at those meetings didn't make finished products. So I think it's very important to bear in mind the substantive standard.

The next thing, your Honor, let me just point out, Mr. Kessler likes to speak of expense and so on, and defendants may be differently situated on them.

But I can say as I sit here right now my clients have produced upwards of 600,000 documents. My clients make the finished products, and they purchase the tubes. We purchase the tubes. We purchase the things that are talked about in any of the criminal resolutions, and we -- as of today we produced about 643,000 documents. Those relate to finished products.

Prior to the filing of plaintiffs' opposition in April, we were in the neighborhood of 571,000 pages. Unless I'm mistaken, I don't see one of our documents referenced by plaintiffs saying here you go, here -- here is my -- you know, here is my finished products conspiracy claim.

We have already incurred immense expense on this finished products phantom. Will they continue to bleed us if the motion is denied? No doubt. No doubt. I mean, let me bleed you to the table and force some

sort -- I mean, that's sadly the -- it's too pervasive in American litigation.

But some defendants may have produced something on finished products, some -- we as prior to their filing under opposition 571,000 pages. Where is it? Where is the finished products conspiracy on the part of people to buy the tubes?

Final point I'd leave you with, your Honor, two final points. And I know I am sounding a little repetitive.

THE COURT: I'm sorry, what?

MR. SIMMONS: Couple of other points.

THE COURT: Yeah.

MR. SIMMONS: It's very rare where you get the amnesty candidate, Chunghwa, answering requests for admissions like what we put before the court here. Chunghwa emphatically admitted they have no knowledge or evidence of a finished products conspiracy.

You know, I spoke even to Joel Sanders of Gibson Dunn about that when we were serving those. He said that's just not -- that's just not on green earth ground. So we can't discount the value of those admissions.

Final point, your Honor, the indirects said look, it's a tube case. I am -- my putative class

members bought finished products and I think they were impacted by an upstream input conspiracy, I want some evidence on passthrough and so on. I don't think there is a defendant at this table, they can correct me if I am wrong, who would take issue with that. But that is a dramatically different scope of discovery than produce everything on finished products and the whole thing.

So long-winded way, your Honor, of saying while I continue to be bled, my clients, maybe, maybe, but I have already incurred upwards of 600,000 pages of discovery because, you know, motion is denied, we are going forward.

I think the defendants are being circumspect with this motion. No one is seeking monetary sanctions. They are simply saying enough is enough, look at what is before you, look at those requests for admissions by the party that has been cooperating with opposing counsel. Look at it. And we have already incurred immense expense. It should stop.

That's -- I'll -- I'll maybe reserve depending on what is said by the opposing table. But that's all I'll say for now.

Thank you for your consideration.

THE COURT: Any other defendant want to be heard?

MR. SHAPLAND: This is Eric Shapland, your Honor, on behalf of LG Electronics. We did not join the Rule 11 motion, so I didn't have an opportunity to respond to some of these statements made in plaintiffs' opposition.

I just wanted to make one footnote point. Plaintiffs do a lot of lumping together of all the various different defendants. And in one place they provide a list of all those defendants who have been indicted or whose employees have been indicted, and they include my client, LG Electronics, in that discussion. I want to be clear that LG Electronics has not been indicted, nor have any of its employees.

What plaintiffs are referring to are indictments against employees of a joint venture which is a separate company which was created in 2001. And so those individuals were not LGE employees.

THE COURT: All right. Anybody else on the defense side?

All right. Plaintiffs' side.

MR. LEHMANN: Your Honor?

THE COURT: Yeah.

MR. LEHMANN: Mr. Saveri and Mr. Simon were to discuss the factual components related to this claim. But given what has gone before and your Honor's express

concerns about how to interpret the Keegan case, I think it might be useful to first set the legal framework.

THE COURT: That's fine. Whatever way you want to do it. Do you want to speak sitting or do you want the podium?

MR. LEHMANN: I prefer to just speak here.

THE COURT: Okay. That's fine. Go ahead.

MR. LEHMANN: Your Honor, I'm going to start with the Townsend case, the en banc decision of the Ninth Circuit.

THE COURT: Yes.

MR. LEHMANN: And that case establishes that a filing can be sanctionable under Rule 11 if it's done either for an improper purpose or is frivolous. The Ninth Circuit en banc said frivolousness involves a two-fold inquiry. It is both baseless and made without a reasonable and competent inquiry.

The Ninth Circuit in Townsend also recognized that there is a sliding scale here in terms of the circumstances of the case and the type of pleading that is being attacked under Rule 11. You would apply a different standard with respect to a pleading submitted in connection with summary judgment than you would with respect to a complaint.

The Ninth Circuit in Townsend en banc said

this: If the relevant facts are in control of the opposing party, more leeway must be given to make allegations in the early stages of litigation that may not be well grounded.

In a similar vein, leeway should be given to make allegations relating to an opposing party's knowledge, purpose, or intent if the case is one in which a prudent lawyer to be safe would name a number of defendants such as in a complex product liability case. Imprecision at the outset of the litigation should be tolerated.

How does Keegan interpret Townsend? The court in Keegan read Townsend as what it called an "objective objective standard" that turns on a conjunctive filing of both baselessness and lack of reasonable inquiry. But what does that mean?

I think the fair reading of Keegan -- and it's directly derived from Townsend -- is that an attorney cannot be sanctioned for a complaint that is not well-founded so long as he or she conducted what a reasonable person would view as a reasonable inquiry.

Likewise, under the logic of Keegan, derived from Townsend, an attorney can't be sanctioned for a complaint which is well-founded, but the attorney failed to conduct a reasonable inquiry to know that it was

well-founded.

The objective objective test as viewed in Keegan means that you don't rely solely on what the plaintiffs knew what they filed the lawsuit. The court said that under that test, for example, the fact that an attorney didn't rely in certain cases before raising a claim that showed that the claim was non-frivolous was irrelevant, because it's not a subjective inquiry, it's an objective inquiry as to both baselessness and lack of due diligence.

And consider the facts that were involved in Keegan. There, there was a securities suit filed in 1991. It turned out as discovery progressed there was a scientific study in 1989 that supported the theories advanced in the plaintiffs' suit about why the securities filings of the defendant were inaccurate and misleading.

The court below, the district court, said too bad, you have to look at what the plaintiffs subjectively relied on in 1991, and even if they would have been right under that 1989 study, if they didn't rely on it, they should be sanctioned. The Ninth Circuit said no, that's incorrect.

So what's the takeaway from Keegan? You can't grant a Rule 11 motion if there existed evidence of

which the plaintiffs were unaware at the time of the filing and on which they didn't rely that would support their claim and establish that their claims were not baseless. That would include, for example, in the context of this case evidence of discussions between defendants on finished product that might be in these 500,000 pages, which we are only in the process of now starting to review, it might be in the documents that are going to be produced by other defendants that we haven't yet received because you have to look at all of the evidence that would have been available and on which they could have relied at the time they filed the complaint, and we are talking about documents that obviously antedated the complaint in 2009.

So Keegan to my mind flows directly from Townsend and states the correct rule. It says you shouldn't be looking at the subjective intent or knowledge of the plaintiffs who filed the claim, you should be looking about what's objectively reasonable, and part of that inquiry would include evidence that existed, but was unknown to and not relied on by the plaintiffs at the time they made their claim.

THE COURT: Well, is Mr. Kessler correct, then, that no Rule 11 motion could ever be made until you are at least beyond the discovery stage and into

motions for summary judgment?

MR. LEHMANN: Well, I'll tell you, in Keegan it wasn't at the point of summary judgment. Judge Conti in the Hayes Microcomputer case said citing this conjunctive standard that it's a difficult standard to meet, and the moving party rarely meets it.

Let me overlay something else on top of this.

THE COURT: Well now, wait a minute. Answer my question.

MR. LEHMANN: The answer, your Honor --

THE COURT: Does Keegan entitle you to all the discovery you want on all the issues in the complaint and they can't be reached by a Rule 11 motion until all that discovery is finished?

MR. LEHMANN: In my view, the holding of Keegan is such if they want to file their Rule 11 motion, they should do it at the time of summary judgment, not now.

And there is another reason why I would say that. This is an antitrust case involving allegations of conspiracy. The Ninth Circuit has said that the evidentiary requirements imposed by Rule 11 must be applied with particular latitude in antitrust cases involving conspiracy allegations.

In the decision in the Community Electrical

Services case cited in our brief, the court said the antitrust aspects of this case also affect our determination under Rule 11. We acknowledge the lenient evidentiary requirements for proving a conspiracy violating antitrust laws. Federal courts grant wide latitude in concluding conspiracy or collusion from parallel conduct and the inferences drawn from the circumstances.

We grant summary judgment less frequently in the antitrust context in part because the alleged conspirators control the proof. The less demand -- this less demanding standard should also apply under Rule 11 to evaluate the associated documents. That's 869 F.2nd 1235 at 1246.

Townsend disagreed with Community Electric on another point, but not on this point. And this holding in Community Electric has been followed by the Ninth Circuit in an opinion as recently as 1997, it's an unpublished opinion, so we didn't include it in our brief. But if your Honor wants to see it, it's 1997 Westlaw 76177, Hilo versus BP Exploration.

Other courts besides the Ninth Circuit take a similar liberal view of Rule 11 in the context of pleading antitrust conspiracies. The Third Circuit held this in the Mary Ann Pensiero case, 847 F.2nd 90 at page

95, cited in our brief. Proving a conspiracy is a usually difficult and often impossible without resort to discovery procedures. This is particularly true in antitrust actions where the proof is largely in the hands of the alleged conspirators. A requirement that counsel before filing a complaint secure the type of proof necessary to withstand a motion for summary judgment would set a prefiling standard beyond that contemplated by Rule 11. At the time plaintiffs' counsel filed the complaint here he knew facts that supported a reasonable suspicion of cooperation between defendants and other parties who could have been expected to benefit from the defendant's intransigence.

These factual circumstances and the rational inferences that may be drawn from them convince us that allegations of the first count comported with Rule 11's prefiling investigation requirement.

That ties into another point that needs to be considered here. Under the applicable Ninth Circuit standards as set forth in the Met Life case, you don't have to have, you don't have to have a smoking gun in order to get past a Rule 11 motion with the complaint. You don't need killer evidence. You can rely on inference, you can rely on inferences that would be drawn from conclusions. All you need is some evidence.

The Met Life case which we cited extensively in our brief makes this point. It says that to satisfy a Rule 11, a factual allegation need only have some evidentiary support. I'm citing Met Life 2010 Westlaw 5559693 at pages 10 and following.

An attorney satisfies his or her burden under Rule 11 by confirming that some evidence supports their claim, his or her claims. For Rule 11 purposes the allegation merely must be supported by some evidence. Because we are unable to say that plaintiffs have had no factual basis for the allegation we cannot conclude that plaintiffs violated Rule 11's factual injury.

For purposes of Rule 11, circumstantial evidence and the reasonable inferences drawn from that evidence are treated as evidentiary support to overcome a Rule 11 motion.

You don't need killer evidence when you file an antitrust complaint. You certainly don't need it to avoid a Rule 11 motion based on that complaint.

I hand it over to my colleagues.

THE COURT: Okay.

MR. GUIDO SAVERI: Your Honor, I'd like to make a few statements before we get things going. You mentioned what the standard was. What Mr. Kessler in effect has said, and what he's argued is, a motion for

summary judgment. And that is not a proper motion for a Rule 11 as indicated by the advisory notes under Rule 11.

His whole thrust is that you don't have a case, and consequently you should grant the motion. We do -- we have alleged certain things in our complaint, and we are not -- eventually we should be given the right to prove those things. And Mr. Kessler's making the motion that he should make at the end of the case.

And then I want to start talking about standards. I view this Rule 11 motion as an insult to me and to my co-counsel. It violates the purpose of Rule 11 and was filed for improper motives, as discussed below.

In ruling on a Rule 11 motion, the court must consider the signage credibility, the signers' credibility, the persons who signed that complaint.

Judge Conti was part of the appellate panel in Rofact International, Inc. versus Hitachi, 931 F.2nd, 147 Fed Circuit 1990, where it was stated that, quote "Considering whether a complaint was supported by fact and law to the best of the signer's knowledge, information, and belief, a court must make some assessment of the signer's credibility. And a district court's ruling that a litigant's position is factually

well grounded and legally tenable for Rule 11 purposes is similarly fact specific." And he was quoting from the U.S. Supreme Court's opinion in Cooter versus Dell, 496 U.S. 384 1990.

Now, I have been practicing plaintiffs' antitrust class action law since 1959, and I have settled or won many cases and obtained collectively billions of dollars for classes. I was selected by the State Bar Of Unfair Competition and antitrust section as lawyer of the year in 2007. I have testified before the federal Judiciary Committee on antitrust matters, and I have lectured on antitrust matters before the Federal Practice Institute and other lawyers associations.

Without being boastful, I believe I have a reputation for poverty, honesty, and the ethical practice of the law.

I have filed more than 100 antitrust complaints in my career. Many of them were based on government investigations and many were not. I have never filed a complaint in bad faith, nor have I ever been accused of doing so. Such a motion impugns my integrity and those of my co-counsel.

The consolidated complaint in this case was signed by the most prominent and experienced antitrust attorneys in the United States. The executive committee

alone, alone is composed of the following attorneys and firms, and I'm going to list six or seven of them that are most prominent and best class action antitrust attorneys in the United States and have been so for the past 30 years.

In fact, Mr. Cocette, who is on a steering committee and signed this complaint, was recently inducted into the Trial Lawyer Hall of Fame for 2011. It is the most prestigious trial lawyer association in the United States.

Joseph Cotchett, Michael Lehmann of the Hausfeld office, his office has been lead counsel in I don't know how many cases, and they know what they are doing.

Richard Heimann of the Lieff Cabraser office is lead counsel in LCD, and is a very prominent antitrust lawyer.

Bruce Simon of Pearson, Simon, Warshaw, Penny, he is the lead counsel in LCD, and his background is impeccable on antitrust litigation.

Laddie Montague out of Philadelphia is one of the leading attorneys in the United States on antitrust litigation, and is lead counsel in many cases, including a chocolate case back East.

Joseph Bruckner of Lockridge, Grindal and

Nauren in Minneapolis is of the same kind, has been lead counsel in many cases in the United States.

And Michael Free of Free, Scanner, London, and Million in Chicago has been lead counsel in many cases. In fact, Mr. Freed and I were lead counsel in a brand name prescription drug case in front of Judge Kocoras that we tried in Chicago eight or nine years ago. That case did not have any government basis allegations or anything else. We developed that case and we settled it for $735 million. We went to trial, we lost it on a trial, it was affirmed on appeal. But Mr. Freed is one of the most prominent attorneys in the business.

So the point that I'm making, if you read what Conti says, you have got to look at the credibility of the lawyers.

So we don't file actions in bad faith. And that is the allegation in this complaint, that we have filed this action in bad faith.

The present Rule 11 motion is a fragrant abuse of Rule 11, and is the type of motion specifically criticized by the advisory committee notes to Rule 11, which state that, quote, "Rule 11 should not be employed as a discovery device or to test the legal sufficiency of all allegations in the pleadings, and that other motions, other motions are available for these

purposes."

And that's exactly what Mr. Kessler and his group are doing. And it's interesting to note that only three law firms have filed the Rule 11 motion in this case, all the other defendants have not filed it.

The defendants here have tried three times to get the allegations of the direct purchaser's complaint overturned, once before your Honor, again before Judge Conti and seeking review of your Honor's decision, and a third time in seeking an interlocutory appeal. All these efforts failed.

Rather than fairly litigating the issues framed by the complaint, a subset other than the three here, defendants have chosen the tactic of using this Rule 11 motion as another thinly disguised dismissal attempt. That's what they are trying to do. It's a collateral attack, a collateral attack on what your Honor ruled, what Judge Conti ruled, and what the Ninth Circuit ruled.

The court should not tolerate this conduct. In assessing this latest motion, the court should keep in mind that counsel for Panasonic has a pattern and a practice of making un-meritorious Rule 11 motions as reflected in footnote 2 in our brief.

Also, this motion is not a discovery motion.

It does not relate to the scope of discovery that plaintiffs are entitled to under the liberal rules of discovery to prove their case. That is a discovery issue which is being separately argued, and it's going to be argued a little later. And it gets into the number of custodians, how many custodians do you really need to get into this question of finished products.

And as Mr. Savari will argue later, we have worked that problem out with every defendant. And it covers pursuant to the -- to your order and it covers finished products. We worked out a custodian basis with everybody, every defendant in this case on finished products with the exception of Mr. Kessler.

It is plaintiffs' position that discovery should be broad enough to permit them to fully discover the issues presented by the complaint and should not be truncated by unfounded arguments of burden which are universally raised by defendants in cases of this kind by the use of adjectives such as "massive, global," and similar adjectives in an effort, in an effort to mislead a court into improperly limited discovery simply because in doing so it would make the case easier and perhaps shorter, but at the same time depriving the plaintiffs of the discovery that they are entitled to in order to prove their case.

Like DRAM, SRAM and LCD, the CRT is a global conspiracy involving both cathode ray tubes and finished products. And a court should not deprive plaintiffs of the discovery they are lawfully entitled to by the defendants.

The length of the class period, the length of the class period and the products involved and the global nature of the conspiracy were created by the unlawful conduct of the defendants, not by us, and the plaintiffs should not be penalized because of it. This case is not different from what happened in DRAM, SR and LCD. These are global conspiracies.

And the nature of the cases that we have throughout the United States like the air passenger case and the transport case back in New York involving the airlines, they are all global conspiracies. The antibiotics case was a global conspiracy. You cannot cut these cases down, because they are global conspiracies.

And the defendants always come in with these arguments, they are massive, we have got to do a lot of work, and they have all been rejected because they are global conspiracies which affect everything, and you can't curtail the discovery in a case on a basis of so-called "massiveness." These cases are big and

require a lot of work.

To violate Rule 11, a pleading must have been filed without a reasonable investigation. Under all the circumstances, and -- and it must be objectively baseless. And we refer the court to the Townsend and Keegan cases, and specifically to Judge Conti's decision in the Ray Hayes Microproducts case.

The allegations in the consolidated complaint, the allegations of the consolidated complaints are neither objectively baseless, nor made with a reasonable investigation under all the circumstances.

In other words, the -- the allegations of our complaint are neither objectively baseless, nor were made without a reasonable investigation of all the circumstances.

Plaintiffs' extensive prefiling investigation covered substantial evidence that included finished products. Its prefiling investigation was extensive and included the following: An extensive oral proffer from a participant in the conspiracy, defendant Chunghwa. Chunghwa identified the participants and provided the dates of over 500 meetings, described the different types of meetings and explained the typical matters discussed.

It provided an evidentiary basis for alleging

that the conspiracy including finished products. As an example, the CRT prices agreed upon at the meetings apply to internal, internal transactions of the vertically integrated conspirators; that is, those that also manufactured TVs and monitors as well as to third parties. These internal sales constitute the majority of defendants' sales of CRTs.

Now, Mr. Simon talked about his client. And I don't want to get off the tangents.

MR. SIMON: Ian Simmons. Ian Simmons. Not Simons.

MR. SAVERI: Ian Simmons.

MR. SIMON: There is a big difference.

MR. SAVERI: And he makes a big deal that his client doesn't manufacture tubes, it just manufactures finished products, and he is a big victim of the conspiracy.

So on behalf of Samsung, he is going to sue his parent who just pled guilty in front of Judge Alsup last week. So he is going sue his client, another Samsung subsidiary, for fixing the prices of the product that it sold to his client, the other Samsung person. And presumably when he does that he will have to take the deposition of the chief executive officers and managing pricing agents of Samsung, the parent of his

company. And I'd like to see that when that happens.

So these arguments that they are making are so ridiculous that they are absurd. This is why we are talking about you have to look at the internal situation.

One Samsung company makes the tubes, it sells it to another Samsung who takes those tubes, puts the increased price in the finished product, sells that product at a high price, and steals money from my client. And for them to come in and say they are victims is the most ridiculous statement I have ever seen.

I want to be present when he takes the deposition of the president of the parent company. And that theory and idea permeates a lot of these cases because one company manufactures the product and sells to the other product, and then it goes on.

And in that connection, it's a little late, but I want to read to you a statement about conspiracies. You talked about direct evidence. Seldom, seldom in antitrust case do you ever find direct evidence of a conspiracy. And I have been in these cases for many years. And I don't know of anyone, maybe one exception, that can find direct evidence of people agreeing all right, let's sit down, fix this.

Everything is circumstantial. You have got to prove a conspiracy by circumstantial evidence. That is the only way you can do it.

And when you put all the pieces together sufficiently so to let a jury determine whether or not a conspiracy existed, we do not have to prove direct evidence.

In fact, as I said, the experience in all these cases, in all these major cases, in the DRAM case, in the LCD case, in the antibiotic case, in brand name prescription drug cases, all involving circumstantial evidence cases.

And in that connection, your Honor, I want to read to you one small paragraph of a case, United States versus Consolidated Packaging Company, 575 F.2nd 117 at 126, Seventh Circuit, 1978. And this is what the appellate court said. This is a case where the government tried the plaintiff, he was convicted, and he took an appeal. And this is what the court says: "The law has some obligation to keep up with the ingenuity and subtlety of sophisticated businessmen, to keep up with the ingenuity and subtlety of sophisticated businessmen. If persons devise some subtle, unique form of conspiracy tailored to best serve their own purposes which leaves few tracks or fingerprints, it may violate

the law, even though it cannot be easily accommodated in the familiar mode of a simple and limited conspiracy."

That is the best statement that I have seen in my years of what goes on in conspiracy. You get these high class guys that get together and try to beat the system.

In fact, the documents that we will -- that Chunghwa produced, there is one great one that says how to -- how to avoid the antitrust laws. And then they list how, what you do to avoid the antitrust laws. That's one of the documents that we got from Chunghwa.

And when you are talking about direct evidence, I may go back to the -- to the electrical cases. There were a lot of indictments in the electrical cases, about 17 of them. They were individual indictments on different products. They were of steam turbine generators, hydro generators and everything else. And there was one product that there was a conspiracy on, and the FBI couldn't figure out how they did it. They couldn't figure out how they -- they worked the conspiracy on this product.

So they finally went to the defendants who pled guilty on that product and said "How did you do it? How did you fix the price on this product? We can't figure out how you did it."

And the representatives of the company said "We did it by the phase of the moon." I'm not exaggerating. By the phase of the moon, depending what phase of the moon was that would tip off what guy that came in with the highest price.

Well, that's the stuff that we find when we filed these cases. And I wanted to bring that court's attention.

But let's get back to what we have. As I said, what we have found in this case, the CRT prices agreed upon at the meetings apply to internal transactions, as I just said, internal transactions of the vertically integrated conspirators; that is, those that also manufactured TVs and monitors as well as to third parties. These internal sales constitute the majority of defendants' sales of products.

We also found that the status of the finished product market, that is, prices, sales, projected demand, and whether the prices of finished products could be increased in the amount of the agreed upon CRT price increase were regularly discussed at the conspiratorial meetings. And the defendants admit this. They admit that these things were discussed at the meeting.

And I am repeating. The status of the

finished product market, that is, prices, sales, projected demand, and whether the prices of finished products could be increased in the amount of the agreed upon CRT prices increased -- price increased. These were regularly discussed at conspiratorial meetings.

THE COURT: What are you reading from? Where does that quote come from?

MR. SAVERI: This is -- this is not a quote.

THE COURT: Okay.

MR. SAVERI: But this is what we have found in our investigation.

THE COURT: All right.

MR. SAVERI: We also have found the following in our investigation. And I'm getting -- I'm citing this because this is what we found in our investigation and to support our theory -- not our theory, but to support the allegations of our complaint that we did make a reasonable investigation under the circumstances, and that our complaint is not objectively baseless.

We also found that the prices of CRTs was set based on the conspirator's view of their effects on the finished product.

While Chunghwa --

THE COURT: Would you read me that again, please?

MR. SAVERI: The prices for CRTs were set based on the conspirator's view of their effects on the finished products.

In other words, the CRT price was set, what effect is it going to have on the finished products. Because if I'm selling the tube, I want to know what -- and fixing the price, I want to know what effect that has on the finished product. Because if -- if the price is low, then the price of the finished product is going to be less. So if you fix the price of the tube, we know that the finished product price is going to be higher.

And that in and of itself is a unitary conspiracy. That's a price fix on -- that's a price fix on -- on the tube and on the finished product.

You and I get together and say okay, I'm doing the tubes, but I know it's going to have an effect on the price. So I'm going to fix my tube because I know it's going to have an effect, and the price of the finished product is also going to be affected, and so that the price of the finished product passed on is going to be excessive.

Now, under Socony-Vacuum, under the Catalano cases and other cases we cite, that in and of itself is a conspiracy to fix the price of the tube and the

finished product. That's what Socony says, that's what Socony says, and the other cases we cite. That in and of itself is a conspiracy to fix the price on the tube and on the finished product. That is the law.

Now, what else did we find? The prices of CRTs was set based on the conspirators' view of their effects on the finished product. While Chunghwa was not allowed by the DOJ to provide documents, they were not allowed to give us documents, Chunghwa read, Chunghwa read the various notes of these meetings to the plaintiffs' counsel, they read various notes of these meetings to the plaintiffs' counsel which confirmed these discussions, including notes that showed the conspirators deriving the CRT price from a targeted finished product price.

In other words, they read to us. They couldn't give us the documents, but they read to us these -- they read to us that this is what the documents you get are going to show. And on the basis of what we got, those are one of the reasons why we filed a complaint.

Now, here are a few examples. There is an April 13th, 1999, April 13th, 1999 top management report gives consideration to colored display tube prices as a way to punish sellers of monitors. That's TVs. That is

TVs who set their monitor price too low.

In other words, a April 13th, 1999 top management report gives consideration to increasing color display tube prices as a way to punish sellers of monitors. That is TVs who set their monitor prices too low.

So in other words, we have got to see what we are doing. If our monitor price is too low, that finished product price is going to be too low.

There is a June 23, 1999 top manager report, a top manager report, where it was discussed that raising prices on 15-inch CDTs by $5.00 would allow monitor makers, that is, TV makers to adjust their prices upward to make an extra profit.

So what are they talking about finished products if it has nothing to do with finished products? Here is a guy talking about tubes and say hey, we better watch out on 15-inch CDTs because by allowing five bucks we are going -- that's going to affect the price of the finished product, so we are going to increase the price of the tube. That's what that document says.

Note another one. Notes from the June 23, 2000 CDT working meeting where it was noted that an increase in monitor prices directly benefits CDT increases. In other words, the increase on the price of

a monitor price directly affects, when they talk about monitor prices talking about TVs, affects CDT increase.

There is a September 21, 2001 CDT top management meeting where the prices charged for monitors were used as a benchmark to set the prices for CDTs so that the CRT monitors should be priced at a defined level below the LCD monitors. This is what now -- we even discussed, the LCD discussion; in other words, that the CRT tube prices should be priced at a defined level below LCD monitors.

At these meetings they talk about the tubes and they talk about the prices and they talk about finished pricing, and the information that we have been given shows that.

Then there is a February 22, 2002 top management level meeting where the CPT, where Chunghwa indicated that the $2.00 price increase this time, I'm quoting, has to facilitate monitor makers, it has to facilitate monitor makers, that is, TV makers, the transfer of the CD increase to customers, and that the increase in price will increase each size again by $3.00 in April. It hopes that makers can have a common understanding and implement accordingly. I'm quoting here. The English isn't correct, but this is how the foreign people work.

There is a March 25, 1927 (sic) top manager level meeting where a CD price hypothetical hike was discussed, and it was said that, quote "As this wave of price -- again as this wave --" I'm sorry, that's not the proper use of it, but this is what he says. This is what the memo says. "As this wave of price hike comes with short notice, price would go up by only USD 2 to 3 at the post stage. We should also inform the customers of a possible second stage price hike so that they can take time to pass it on to the OEM customers." Now, the EOM customers are the guys that are making the finished products.

Plaintiffs have more evidentiary support for these allegations that moving defendants failed to credit. Defendants cannot dispute that there is evidence that the conspiratorially set prices for CRT tubes explicitly apply to internal transfers within vertically integrated defendants. This fact alone supports plaintiffs' allegations of a unitary conspiracy because such internal prices are meaningful to a vertically integrated company, or a member of a vertically integrated corporate family, it's meaningful only as a basis to determine the pricing of the finished products, of which the tube was a primary and most expensive component, over 50 percent, 50 percent.

From this fact alone a jury could infer a common scheme that the illegal tube price increases would be incorporated into the prices of defendants' finished products.

Moreover, it makes no sense for a manufacturer of CRTs to fix prices to itself. It's not going to fix a price to itself when it sells to a subsidiary.

Again, the vast majority of the vertically integrated defendants' price fixed CRT sales were to themselves. In other words, most of the sales from one subsidiary to the other were on an integrated, vertically integrated basis.

Similarly, moving defendants -- I'm going through some of these things -- what are the reasons I'm going through this is that the two standards that we have, you asked what are the standards of the Rule 11. We have got to show that we made a reasonable investigation under all the circumstances, and we have got to show that what we have alleged is not objectively baseless. And I'm reading these things to you as to what we found out in these things that support our finding that these are not objectively baseless and that we did make a sufficient investigation under the circumstances.

And nothing that Mr. Kessler said disputes

this, and nothing that he has so far has indicated or proven that we did not objectively, or that we did not make a reasonable investigation and that our complaint and our allegations or our claim is objectively baseless. There is no grounds, and he hasn't shown anything.

He comes up with a lot of conclusions, you have no evidence, you have no evidence, and I have been reading you a bunch of documents that reflect exactly that prices were discussed and it affected both the finished product and the tube.

And under the law as I have discussed, Socony and all those cases, that in and of itself is a price fixed on that product. That is the law.

And again, what we are doing in this case, we are arguing a summary judgment motion. That's not the purpose of a Rule 11. The question, did we make a reasonable investigation, and was our claim objectively baseless.

And it's no question about that they haven't complied with it, that we have complied with that, and they haven't proved that we didn't. And the facts that I am giving you to indicate that our claim was not objectively baseless. And I can go on and give you more.

Now, here is an interesting document. The moving defendants ignore evidence showing that defendants -- strike it.

Similarly, moving defendants ignore evidence showing that defendants deriving the price of the tube from their judgment of the maximum finished product prices obtainable. As plaintiffs explained in their responses to the LG documents request, a September 21, 2000 top meeting, it's a 2000, 21 2000 top meeting between Samsung, LG, Orient, Phillips, and Chunghwa, the conspirators reviewed and compared. This is what they reviewed and this is what they compared: The costs of a 15-inch LCD monitor and a 17-inch CD flat monitor. Each product had its current price and a forecast price and each is broken down by various component parts. The retail price of the CDT monitor was less than $249 to 275. The wholesale price was listed at 247 to 260, and the FOB price at 190. Of this latter price $110 was attributable to the cost of the CD and $80.00 was attributable to other costs.

Using this breakdown of monitor costs as a foundation, Mr. Kim concluded how much the group would be able to charge for a CD to stay in competition with LCD panel makers.

I continue -- I can continue to go on and read

these because they are very, very important.

THE COURT: What you just read sounds like it's working the other way.

MR. SAVERI: What? No, it isn't.

THE COURT: The maximum available price or maximum market price at which the finished product is being sold is driving how much of an increase of the component part that the manufacturer --

MR. SAVERI: No, but what they are doing is they are discussing both the tube price and the finished product to see that you can't fool around with the tube price and keep it too low because it can affect the finished price.

And so that you have to increase the -- as you increase the tube price, you are also going to in effect increase the price of the finished product. This is what they talked about. They were related. They didn't keep them separate.

And the notes that we have shown and what we have discussed in our -- in our brief, there are a lot of indications that that is what happened. Now, I can continue to go on and read it.

Now, so that's when -- the one we filed, when we filed our complaint, we had direct evidence that defendants not only knew with great precision what the

finished product price would be, based on a given tube price, they set the tube price based on a targeted finished price, product price. Again, this alone is sufficient to support plaintiffs' finished product allegations.

And to repeat, when plaintiffs filed our complaint, we had direct evidence that defendants not only knew with great precision what the finished product price would be based on a given tube price, they set the tube price based on a targeted finished product price. That's a price fix.

Now, the moving defendants ignore plaintiffs' investigation of the CRT price industry. We made an investigation of the CRT price industry. This analysis showed the historical pricing of CRTs and the finished products, and the structure of the industry also support the existence of a conspiracy encompassing both. Again, this analysis by itself constitutes some evidentiary support, and that is all that Rule 11 requires, our analysis of the industry.

Now, in this case we talked -- here. Now, in this case, as Mr. Kessler concedes, there were a myriad of governmental investigations, a myriad of governmental investigations. The DOJ and many foreign governments conducted investigations into the price fixing

activities of the defendants. These investigations confirmed that the prices set for the CRTs directly increased the prices of finished products. The DOJ press release, the DOJ press release announcing indictment of C. Y. Lin of Chunghwa expressly stated, this is what the press release stated by the DOJ, this conspiracy harmed countless Americans who purchased computers and televisions using cathode ray tubes. So that fixed prices.

The following defendants or their employees have been indicted or their foreign -- or their foreign equivalent for their participation in the conspiracy: Chunghwa, LGE, LP Displays, which is the joint venture between defendants LG and Phillips, and MTPD, which is the joint venture between defendants Panasonic and Toshiba. Samsung, SDI recently pleaded guilty to participation in the conspiracy.

Plaintiffs also conducted extensive research of the corporate relationships of defendants, both within and without the various corporate families. Plaintiffs' research included review of public financial data, regulatory filings by defendants, newspaper and magazine articles, and other publicly available data. This research showed that most of the conspirators also manufactured finished products or were amendments of

corporate families that didn't.

It further showed that the corporate families were operated in an integrated and or coordinated manner by the parent corporations. This is what our research showed, and it's the investigation that we made before we filed the complaint.

The plaintiffs also conducted extensive research of the structure and history of the CRT products, that is, the CRT's products and the finished product market. This research, this research included inter alia a review of historical sales and prices, market shares, pricing trends, barriers to entry, and the interrelationship of market participants.

This information showed parallel pricing, anomalous pricing, a highly concentrated industry, significant barriers to entry with no competitive fringe, a standardized product with competition mainly on price, a history of consolidation and joint ventures within the industry, the climbing demand, a record of antitrust inquiry, the fact that the CRT is the major and most expensive part of a display, vertical integration of many of the manufacturers, both CRTs and finished products, and upward movement in or stabilization of prices for CRTs and the finished products, despite the climbing demand.

All of these factors support the existence of a conspiracy extending to finished products as well. These are the investigations that we made and on which we based our complaint. Only this is some of the stuff on which we based our complaint.

We also had consultation with an expert economist. Plaintiffs' consultant was an expert economist who also examined the structure and the history of the CRT products market. The expert provided plaintiffs with his opinion that there was evidence to support a conspiracy encompassing both CRTs and finished products based on a review of market data and the government investigations.

Plaintiffs also conducted a review of defendants' participation in other conspirators including the related LCD products conspiracy. We looked into this. The LCD conspiracy had been going on, or the case had been going on for some time. Mr. Simon is the lead counsel and knows all about it.

So when we prepared our complaint, we looked at LCDs and manufacture of the panel, and is also the manufacture of the finished product. We have CRTs, it's a manufacture of the tube, and also the manufacturer of the finished product.

And it's rather interesting when you look at

the CRT case and you look at the LCD case. The CRT case, this conspiracy preceded the conspiracy in LCD. I don't know how the government didn't find out about the CRT case before it found out the LCD case, that's rather interesting, and how we were supposed to find out, and it's sort of analogous to the cases that we had in the citric acid cases where there was a -- where the conspiracy among the defendants started in lysine, they set up a program on how to fix the price of lysine. Incidentally, the defendants in the lysine case all pled guilty, some went to jail, and they settled for a substantial amount of money.

So they set up such a great deal on LC -- on lysine and how to fix prices and everything else. So the same people also sold citric acid. They said since we are so successful in lysine, why don't we do the same thing in LCD, which they did, and they went -- and they all were indicted. In fact, there was a trial back in Chicago and I think the vice-president of AMD went to jail.

So we looked at the LCD case to see what -- what similarity does that have with us in CRT. What can we do. Does that give us some information, indication of what's going on in CRT.

Now, in LCD, virtually all of the defendants

in this action are known to have participated in other price fixing conspiracies. Panasonic, formerly Matsushita, Toshiba, Hitachi, fixed television prices in Japan in the early 1990s and before. Defendant SEC, defendant Samsung Electronics of America, Inc., and other Samsung entities, defendant Hitachi Ltd., defendant Hitachi Device, Ltd; defendant Hitachi Electronics Devices USA, various LG subsidiaries, defendant Toshiba Corporation, defendant Toshiba American Electronics Corporation, defendant Toshiba American Information Systems, defendant Chunghwa, and defendant Tatung Company of America, Inc. named in the related LCD price fixing class actions. Same people we have here in LCD.

As here, the LCD complaint was informed by inside information from Chunghwa. That's how they started. Chunghwa gave, made a profit in the LCD case, and just as in the CRT, Chunghwa and LCD doesn't make the finished product. It makes the panel. And it pled guilty, and also settled the case. And Chunghwa settled the case with us in this case.

Also, as here, the conspiracy alleged in the LCD action includes finished products. Those allegations survived motions to dismiss prior to filing the CAC complaint.

Judge Illston has since certified a direct purchase of finished product claims. Moreover, defendant SEC is the amnesty applicant in the LCD case. These are the same people we have here.

SEC also admitted prior fixing with regard to DRAM. SEC was in the DRAM case in which I was lead counsel and they admitted to fixing prices and have a guilty plea by SEC and its subsidiary.

And in the DRAM case, SEC was the amnesty applicant. Also SEC -- when I say SEC, I'm talking about Samsung, Samsung was the amnesty applicant in the SRAM case.

And in addition, these same people were also involved in the flash case. In other words, you are getting these companies that have been involved in flash, LCD, DRAM, and SRAM, all the same people involving conspiracies. We looked at these things and -- and there is -- there are rulings by Judge Wilkins and also a ruling by Judge Armstrong and flash and Wilkin in SRAM that if people are fixing prices in one industry, the same type of people, same guys, there is an inference that they are doing it in the other -- in the other -- in another industry where the same people are involved.

These are the things that we considered and

took into consideration when we prepared our complaint.

The plaintiffs here have alleged just as in LCD that those defendant entities who participated in the glass meetings did so on behalf of their respective families of companies.

In other words, where they attended these meetings, they attended on behalf of their all companies. They didn't say "I represent this person, I represent --" when they went to these meetings if anybody appeared for Samsung it was understood that he spoke on behalf of all the related companies.

Now, as indicated, the plaintiffs here have alleged just as in LCDs that those defendant entities who participated in the glass meetings did so on behalf of their respective meetings of companies, allegations that Judge Illston deemed sufficient to tie in related entities who manufactured finished products.

As in LCDs, we, the plaintiffs in this case, were lead to believe from the Chunghwa proffer that individual participants in the conspiratorial meetings did not necessarily know the corporate affiliation of their counterparts and didn't distinguish between the entities and a corporate family. Indeed, even third party makers of finished products attended some of the conspiratorial meetings.

As in LCD, plaintiffs could reasonably believe that subsidiaries who manufactured downstream products could be held liable along with their parent entities for acts of -- of the alleged overarching conspiracies.

The plaintiffs in this case also knew, also knew for vertically integrated defendants' public filings that the various related companies in the Samsung, Hitachi, Toshiba, Panasonic, Philips, LG, and Tatung corporate families were closely intertwined, intertwined, and managed on a central top-down basis, they were intertwined and managed on a central top-down basis.

Thus a conspiracy involving the manufacturing entities of the CRTs within those families could be reasonably viewed to also encompass the manufacturing entities that made the finished CRT products within those families, especially given intra-family corporate sales that occurred.

The plaintiffs in this case also knew that the DOJs in February of 2009 indicted C. Y. Lin of Chunghwa. And it was accompanied by a press release that stated, the indictment was accompanied by a press release that stated this conspiracy harmed countless Americans who purchased computers and televisions using cathode ray tubes sold at fixed prices. This could be reasonably

interpreted that the conspiratorial impact extended to finished CRT products.

Indeed, Judge Conti, Judge Conti in upholding the special master's ruling denied motions to dismiss said that, quote "When announcing the indictment, the acting assistant attorney general in charge of the antitrust division suggested the conspiracy extended beyond CRT themselves." That same inference is present here, exactly what Judge Conti said. From reading these releases he made that, drew that inference, that same inference could be drawn here.

Now, since the filing, since the filing, since the filing of our complaint, the DOJ has indicted in August of 2009 and November of 2010 five more executives of the defendants here: Simon Lee, Albert Yang, Alex Yen, Tony Chung, and Jason Kim. The DOJ has indicted Samsung SDI through its participation in the CRT conspiracy and Samsung, SDI pled guilty earlier this month.

The publicly available guilty pleas refer to, quote, "Antitrust conspiracy involving the manufacture or sale of cathode ray tube products, including CDTs and CPTs in the United States and elsewhere." In other words, it says includes the manufacture and sale of cathode ray products including CDTs --

THE COURT: Well, does that mean finished products --

MR. SAVERI: Yes, it does.

THE COURT: -- or does it mean the product of the cathode ray tube or the --

MR. SAVERI: When they start talking about --

THE COURT: -- companies --

MR. SAVERI: When they start talking about the victims of people who bought TV, the victims -- the victims were the people who bought the TVs. That's what they said. These are the releases that the government said when they came out with the announcements.

I can go on on this, your Honor. I'm getting down to the bottom here. I'm going to cut down -- I -- most of this or a lot of it is included in our brief.

THE COURT: Yeah, I know.

MR. SAVERI: And I'm going through these things.

THE COURT: I hear you.

MR. KESSLER: I'm making a little more detail than I probably should.

But I want to show you what we -- the investigation that we mapped and what we saw and what was the basis of our complaint. And from looking at all this stuff, no one can conclude that our complaint was

objectively baseless.

I would like to finish with the -- what I said before. A conspiracy to fix the prices of a component of a finished product operates as a conspiracy to fix prices of that finished product to the extent company conspirators sold both products. And I cite the Catalano case, Supreme Court case, U.S. versus Socony and the Northwest case also, and they are all cited in our brief.

I want to conclude this way. The present motion is a --

THE COURT: Wait a minute. Wait a minute. Are you arguing that because a component price was fixed by conspirators and the component price is a factor in determining the price of the finished product, that automatically there is a conspiracy to fix the price of the finished product?

MR. SAVERI: That's correct.

MR. SIMON: If I could elucidate on that, what we are saying is the fact that the finished products and the components were both discussed, the prices amongst competitors, and that those competitors are vertically integrated companies that make both, and that we have sufficient facts to show that there is impact on both, is a unified conspiracy, as Mr. Savari is describing it.

And this is not new, your Honor. This is what we argued twice before you in the motion to dismiss hearing on October 5th, 2009, and at the discovery hearing on November 12th, 2010. It is the same theory.

And the fact of the matter is is that Mr. Kessler in his argument, if you go back and read it, I know it seems like it's some time ago, but if you go back and read it, he has said it both ways himself, because the fact of the matter is the economic reality of these vertically integrated companies -- and seven of them are defendants in this case, and they control most of the market -- is they cannot get the price fix under tubes, the benefits of that when they sell it to their affiliated companies unless the price of the finished product picks up the price fix.

And that's why they were talking about it.

THE COURT: What if they are caught in a competitive market at the finished product level with prices diminishing for the general, because of general demand, and price competition among manufacturers where that ceiling is bringing it down? Doesn't that indicate that those things flow differently?

MR. SIMON: No. No. Hold on a second.

Whether the prices are going down in the finished product market or the food market, so long as

the prices are stabilized, it doesn't matter if prices are going down.

If they are pegging their prices on the tubes in their discussions based on what the prices of the finished products are doing and they are taking that into consideration and discussing it amongst themselves, they can keep the price from going down further. They are pegging the prices against each other. And when they do that, that's a conspiracy.

THE COURT: How can they -- how can they agree at the manufacturing of the tube level to agree on prices at which the finished products are going to be sold?

MR. SIMON: Because they are making --

THE COURT: Or a price increase for each of these products when at the finished product level they are competing with a universe of other people who are helping to set by natural competition, set a price?

MR. SIMON: Because they have enough of the market that they can control their own prices, and no matter how much they go up and down, it's always going to be related to the price they fix in the conspiracy. That's the whole point.

They can't control Sony and the other people in that market, but that's irrelevant. They are --

THE COURT: Why? Because Sony and the other people in the market are the ones who help determine the price for the finished product, not by conspiracy, but by ordinary competition.

MR. SIMON: You know, the manufacturers, all these seven vertically integrated companies not only sell to themselves, they sell to each other, they sell to Sony, they had an agreement as we allege in the complaint at paragraph 144 and 146, and multiple other paragraphs after that that we cite in the brief, starting at 161, et seq, that they had an agreement that their pricing to the people that they sell to is going to be consistent with the conspiratorial price. That makes all boats float to the same level. And it affects the competition not only in the tube market, but in the finished product market.

If the effect in the finished product market is less, it doesn't mean there isn't an effect.

And by the way, on a Rule 11 motion, you can't decide any of this. This is -- this is every -- this is what we were arguing in summary judgment.

THE COURT: I'm following your argument, I'm trying to understand your argument, because I think it runs up against some fundamental economics of how prices are fixed at the finished product level.

MR. SIMON: It does not.

THE COURT: Not fixed in a conspiratorial sense. That's what's bothering me.

MR. SIMON: No. I'll try and explain again.

If you have vertically integrated companies, some of the biggest in the world like Samsung and others, and they are making a fixed on the component, okay, and that the finished product is also affected by that, by intent, and discussion of the component, and they are selling not only to themselves on an agreement that it's going to be the conspiratorial price because they want that full price captured in the finished product and they are selling to others at that same price, it has an impact on competition in both markets.

And that is a unified conspiracy. And that's what economists would say the economics --

THE COURT: What if a manufacturer buys a higher priced tube but decides to absorb the increased cost itself without increasing its product?

MR. SIMON: Then we'll find out how much of that is in discovery and we'll see what impact that is. But we don't know that now.

THE COURT: That's impact, isn't it?

MR. SIMON: It is, but it's not all the impact. It may be one percent of the impact or it may

be ten percent of the impact or it maybe 50 percent of the impact.

THE COURT: Impact makes conspiracy?

MR. SIMON: No. The discussion of the two products in the same setting in the same meetings with people who do both products makes the conspiracy, with the stated intent that they are going to be affecting both products.

THE COURT: So this applies only to the integrated companies?

MR. SIMON: No, because the non-integrated companies are there as well. I mean, they're part of the fix. Whether -- if they don't make finished products, they are still agreeing that their tube prices are going to be consistent with those people who make the finished products.

So they are selling to outsiders in the conspiratorial price too which drives the finished product in a certain direction. And economists are going to tell us ultimately at the end of the day what that impact is.

But I will tell you, just having gone through it in LCD and just having filed our expert reports last night, not only the defense experts, but the plaintiffs' experts all say the same thing, it is economically

implausible that the final price of the finished product will not capture 100 percent of the component costs, fixed or not.

And if they are going to bring the price down --

THE COURT: Regardless of the competitive conditions in the finished product markets?

MR. SIMON: They can bring their price down based on other things that they put in there. They write off the cost of the tuner or they write off with something else.

But if the primary component of the finished product --

THE COURT: Which means the prices didn't go up?

MR. SIMON: It doesn't matter if they go up or down, your Honor. That's what I'm trying to say.

THE COURT: But there is where your impact is on the buyers.

MR. SIMON: The impact can be described either by prices going up, which they did in CRT, both on finished products and tubes in certain periods, prices stabilizing, in other words, we just won't raise the price now and let market demand on the finished products settle down, and stabilizing the price, or prices going

down, in which case they would have gone down further had they not been involved in the price fix.

Those are three economic theories, all of which exist in reality, all of which happened in LCD, and all of which are proved to happen in this case which we already have evidence of.

And the fact of the matter is when the experts get together at the appropriate time in this case, they'll argue with what the impact is, but that doesn't mean we didn't allege a complaint where there is such impact and stated and known impact with intent to --

THE COURT: You allege impact and they are not disputing impact. They are going to let you have whatever discovery you want on impact.

What they are disputing is does impact prove conspiracy so that your discovery and your proof at trial can include price fixing on television sets and TV monitor -- or the computer monitors --

MR. SIMON: But your Honor, let me go back to the Sugar case, we have already discussed.

THE COURT: Yeah.

MR. SIMON: The Sugar case, the only quote I want to remind you about in there is that the court considered whether or not it should allow the plaintiffs to proceed on the finished product because the finished

product contained the Sugar. And the court concluded if it did not allow that in that case, and Linerboard is consistent with that, and Kenevilbord in the Ninth Circuit, it would leave a gaping hole in the antitrust laws.

And by the way, Judge Elston in LCD when she certified a product class, a component class and a finished product class, that he said in her class certificate order at 267 FRD at 306 if there is no finished product class, then it gives the defendants basically -- these are not her words, this is my paraphrasing -- a free pass to fix the components that go into the finished product.

If you don't hold them responsible for the finished products Judge Elston said in LCD then they are going to get away with fixing the price of the tubes and they should be responsible for the finished products as well.

And that's exactly what they are trying to argue here. That's exactly what Sugar says.

THE COURT: Why would they get away with that? I don't understand that.

MR. SIMON: Because they are controlling the -- their own finished products. If you let them fix -- take for example in Samsung's case, we just

recently got their data, and we haven't examined all of it, if they sell let's say 90 percent, Samsung SDI sells 90 percent to SEC, a defendant who settled in LCD, by the way, recently, if they do that, if they do that, then the only way they are going to capture that price fix back is by the sale of those finished products. That's -- this is transfer pricing between two companies. That's how it works.

The full cost, the full burden of that price fix is going to show up in the finished products. It has to.

And if they discuss that and they recognize that --

THE COURT: Wait a minute. Wait a minute.

MR. SIMON: It's a conspiracy.

THE COURT: Why does it happen? Can't -- at the manufacturing and retail product, can't they decide to absorb that cost in order to stay competitive with their other competitors in the marketplace for television sets and --

MR. SIMON: They could if there wasn't an agreement amongst the better people who are in the vertically integrated companies. They are going to pay that price against --

THE COURT: You are back to vertical

integration again. All right.

MR. SIMON: The --

THE COURT: Bear in mind, look. I'm not disagreeing with you.

MR. SIMON: No. I understand.

THE COURT: I'm not necessarily agreeing with them.

MR. SIMON: Right. You are trying to understand.

THE COURT: I'm simply saying I'm puzzled, I'm troubled by these so-called economic relationships that have to be automatic. And that's what I'm questioning.

MR. SIMON: I'm not saying they are automatic, your Honor.

But I'm saying this. You are asking questions that cannot be challenged on a Rule 11 motion. Mr. Kessler, Mr. Simmons and the three movants are saying to you at this point you answer those questions. They can't be answered at this point. Not certainly by Rule 11 and saying that it's baseless. That's the point we have here.

They are trying to put a square peg in a round hole, and they are doing it because they want to hit us over the head with it, because they want to intimidate us into doing something in this case and they want you

to cut down the case and this is their way of educating you about how to cut down the case.

Whatever you do with the case you could do in other means, but Rule 11 is not the proper basis to do it upon, for all the reasons that Mr. Saveri and Mr. Lehmann told you.

You know, one thing I would want to say is -- and I'm not going to take up a whole bunch of time, but I want to make two quick points -- is that Mr. Kessler said, I wrote it down, when you asked him do they admit anything, he said they don't admit there was any conspiracy. Well, Samsung, SDI just pled guilty and they admit there is a conspiracy.

He says "We don't admit anything." We have companies, one of whom has now pled guilty, we have 500 meetings, thousands of pages of documents, and they're coming in to you, the people who want Rule 11 sanctions against us, and they say they don't admit anything.

And on the flip side of that what do they want you to do? They want you to take the admission of Chunghwa, a continued participant in this case, who -- and say but because they answered that request for admission, that that should be held against us.

And I want to talk about that, because that's one of the things that was assigned to me.

The request for admissions have little or no weight. And I would suggest, your Honor, you should give them no weight.

And here is the reason they have little or no weight. Under the Federal Rules of Evidence, you don't have to look at any cases, Rule 801, there is no reason to give those requests for admissions any weight at all because they are hearsay.

Chunghwa's request for admissions are a statement not made by the movants, not made by the plaintiffs which is offered for the truth of the matter stated under Rule 801(c), the movants who were not the declarant under that rule want to use it against the plaintiffs who are not -- both of whom are not -- we are not a declarant either.

So it's actually the type of hearsay rule you would see. And they are trying to use it offensively. There has to be an exception. There is no exception.

The reason there is no exception is because I doubt Mr. Kessler and Mr. Simmons and counsel are going to say oh, it should come in under the coconspirator exception because the request for admissions says there was no conspiracies according to them, so they got no exception.

By the way, in every case that we have with

them, every other case that Mr. Saveri mentioned, when we get to the point of trying to put in guilty pleas or admissions by defendants against other defendants, what do they stand up and say? Under Rule 801 they say "You can't use those against us."

Well, the same thing is true here. The fact of the matter is those requests for admissions should be excluded by you, they bear no weight, they are hearsay, and they have not shown that they should be admitted.

The person signing the verification on those requests for admissions signed them on information and belief. I don't believe he even gave us his title. That's another reason why you should give them no weight.

The request for admissions, they presume the assertion of these separate conspiracies that I guess the idea is if you keep saying it enough it somehow gets some truth to it, it assumes that presumption, but it asks the wrong question. It doesn't ask the question about the conspiracy we allege or the one we say that existed.

So the answer of Chunghwa with respect to those requests for admissions are not the answer to the right question.

THE COURT: All right. Why not?

MR. SIMON: Because they are asking about a conspiracy that's characterized in the manner they want to characterize it.

THE COURT: Well, wait a minute.

MR. SIMON: They didn't ask the right question.

THE COURT: Well, again, my question to you is why not.

MR. SIMON: Here, let's take --

THE COURT: They admit that Chunghwa is not aware of any agreement among manufacturers or sellers of CRT finished products to allocate customers' territories or markets.

What's --

MR. SIMON: Take request for admission No. 2, for example.

THE COURT: No. 2?

MR. SIMON: Yes. It says --

THE COURT: Wait a minute. Wait a minute. Wait a minute.

MR. SIMON: Okay.

THE COURT: Okay.

MR. SIMON: Okay. It says "admit that Chunghwa is not aware of any conspiracy amongst manufacturers or sellers of CRT finished products," of

which they are not one, that's admitted by Mr. Kessler, "including any dependents or managers or sellers of CRT finished products to fix, set the price at which any such manufacturer or sellers sell those finished products."

That is a statement in our view which is a statement of their idea that there has to be separate conduct related to a finished product conspiracy. That's the question that they are asking and that's susceptible to that reasonable interpretation.

They didn't ask the question as you said at page 12 of our brief is it a conspiracy like we said at page 12 of our brief. We don't know what the answer to that question is.

They asked the question exactly how they wanted to frame the issue before your Honor. And that is the point I'm making.

THE COURT: Well, except that it's up to Chunghwa to admit or not admit it.

MR. SIMON: It's up to Chunghwa. And by what I just argued to you, their admission should have no effect on how you perceive the case or how the case should be perceived against us for the evidentiary reasons and for the additional reasons that they -- there is simply not credibility to what they are saying.

They are going to be in this case. They have a reason to say with their co-conspirators what they want to say.

I'll also point out at page 2 the objections under the request for admissions "To the extent Chunghwa admits any request, the response should be not interpreted as admitting anything other than the matters specifically stated in that request."

That means that if they are answering their specific question which they framed on a separateness of a finished product conspiracy, they are not admitting that there isn't something else there.

THE COURT: Let me ask you a question then.

MR. SIMON: Sure.

THE COURT: You may not be able to answer it and they may not be able to.

With all of the meetings identified by Chunghwa, whether they were conspiratorial or not, meetings.

MR. SIMON: Yes.

THE COURT: Do you think that this room collectively has its arms around the overwhelming majority of the meetings that occurred?

MR. SIMON: Do we think we have our arms around it?

THE COURT: Yeah. Yeah.

MR. SIMON: I think we have our arms around the core meetings.

THE COURT: Yeah.

MR. SIMON: But I will tell you from my experience in another case, LCD, that there are undocumented meetings.

THE COURT: Yeah.

MR. SIMON: That there are meetings that came up in depositions that weren't in the notes.

THE COURT: Okay.

MR. SIMON: So I think the answer to that question is we probably --

THE COURT: Or they picked up the phone and said something to be that that didn't get in there.

MR. SIMON: Exactly. So there were discussions amongst people in the United States, their representatives, there were bilateral meetings.

THE COURT: Okay.

MR. SIMON: There were trips. There were all sorts of things that weren't in the actual notes.

THE COURT: But the effective meetings, I guess if the meeting was really effective to fix prices of tubes, probably it was in the meetings of Chunghwa's disclosing?

MR. SIMON: Yes and no.

THE COURT: Yes and no? Okay.

MR. SIMON: Because you know, part of a conspiracy, your Honor, as you know, is monitoring how effective the conspiracy is --

THE COURT: Okay. All right. Okay.

MR. SIMON: -- in policing it. So that was done in meetings outside the Crystal meetings in -- in the case of --

THE COURT: Yeah, I understand.

MR. SIMON: Okay.

THE COURT: Of course.

MR. SIMON: Can I make one last point, your Honor?

THE COURT: Yeah. Sure.

MR. SIMON: And I want to give you something, because I really -- it kind of is the character of what is going on here. I made just a little chart, it's nothing fancy.

But in the reply brief, Mr. Kessler and his colleagues --

THE COURT: Well, did you give that to him?

MR. SIMON: Yeah, I'll hand it around.

They make a lot of statements, and I have outlined them here, about that the indirects have seen the light.

THE COURT: I'm not attributing --

MR. SIMON: Okay.

THE COURT: -- much to the fact that one group of defendant -- plaintiffs is not alleging. They can have their own reasons. It can be practical reasons, they can be tactical reasons. They can say that in their case with their people they are representing being indirects, the dollars don't make any difference to them or that people's position doesn't make any difference to them.

And I don't think by settling their -- their taking any position on the merits of the -- of the allegations.

MR. SIMON: But my point is more this.

THE COURT: Okay.

MR. SIMON: We have a group of attorneys who are accusing us of very bad things and saying Rule 11 should be issued against us. In their reply brief they make the four statements on the left-hand side here about what the indirects supposedly acknowledge, whether you buy it or not.

THE COURT: No, that's what I'm saying.

MR. SIMON: But then in the stipulation itself it's mischaracterizing exactly what the indirects said in the stipulation.

THE COURT: Okay. But you see --

MR. SIMON: That's the type of evidence that's being presented here.

THE COURT: I'm not putting any weight on the fact that the indirects dropped out of it.

MR. SIMON: Okay.

THE COURT: They can have their own reasons, purely economic practical ones, for dropping out. Okay.

MR. SIMON: Well --

THE COURT: Maybe they don't need the same type of discovery, for example, that you need.

You know, this -- so I'm just, I'm not attributing anything to it.

MR. SIMON: I understand.

The only -- last thing I would say because it's late and I'm sure there are some responses.

THE COURT: Yeah. And we haven't even gotten to the second motion.

MR. SIMON: I want to -- I want to say something about what Mr. Simmons said. He made this comment that he spoke to Joel Sanders and Joel Sanders said something to him, counsel for Chunghwa. It's totally outside the record.

THE COURT: Yeah.

MR. SIMON: It's beyond the papers.

And actually, a number of things Mr. Kessler and Mr. Simmons said are not within the safe harbor provision of the Rule 11 motion because they are outside of what they presented in that motion to us, and I suggest to you you should completely disregard it. But if you consider it, he has probably blown the safe harbor provision.

And lastly, what this is all about is an argument about burden, an argument that should be handled in the context of creating discovery procedures that will allow us to prove our case based on a good complaint and a massive amount of evidence. And that's how it should be handled. And that's where you have the greatest discretion.

And that's where we are already working, as Mr. Saveri will tell you, to get custodians and everything else put into place so that the burden isn't this monumental calamity.

I almost feel like Mr. Kessler and Mr. Simmons are talking about judgment day coming, and they are about as right as judgment day coming as the other guy was the last two times, now he says he is going to come again in October.

There is no calamity here. It's been managed in LCD, it can be managed here, and there is no threat

of a calamity as they say it. That shouldn't even be part of the consideration.

MR. LEHMANN: Your Honor, one concluding legal observation.

THE COURT: Yes.

MR. LEHMANN: And I'll keep it short.

We talked about the expert analysis that would be applied to the evidence here of pass-on, whether they -- some of the costs are absorbed, some are not. That's going to be the subject of economic evidence in this case and would normally be tested on opposing expert reports in connection with summary judgment.

As Mr. Saveri pointed out, and it is important for this context under Rule 11 we did consult with an expert before we filed the consolidated amended complaint, and that consultation along with all the other things he identified informed a decision on how to plead.

Page 15 of our opposition brief, there are cases that say that where you go and consult with an expert prefiling, that is a factor that will typically satisfy your due diligence responsibility, so in the due diligence inquiry requirement under Townsend, and under Townsend and under Keegan, I go back to where I started off at the beginning. If we satisfy either one of those

problems, defendants have not met their burden.

THE COURT: Okay.

MR. CORBITT: Your Honor, could I say one thing?

MR. SAVERI: Let me just make one statement before we finish. I should --

THE COURT: Oh, you aren't finished?

MR. SAVERI: As your Honor is aware, a separate complaint has been filed by the Voice Schiller office in New York.

THE COURT: Yes. The stipulation wraps that case.

MR. SAVERI: You are going to end up with it.

THE COURT: Okay.

MR. SAVERI: And the allegations in their complaint are practically identical to ours. They allege a complaint of price fix both on CRT --

THE COURT: So their due diligence was talking with you?

MR. SAVERI: Excuse me, your Honor?

THE COURT: So their due diligence was talking with you?

MR. SAVERI: I don't know what their due diligence was. It could have been other -- other material.

But the last thing I want to say, your Honor, and I know it's getting on long, but very respectfully, the discussions that we have had today about impact and Catalano and Socony and what effect one price has on the other, those -- those are motions for summary judgment motions, a Rule 11, a Rule 11 motion just addresses the two standards that it requires, whether we made a sufficient investigation under the circumstances and whether our complaint is subjectively baseless.

And on the basis of that --

THE COURT: Well, see --

MR. SAVERI: It's not -- what they are doing is exactly what Rule 11, the notes say you are not supposed to do. It's not a motion for summary judgment, it's not a question of whether we should prove our allegations or not, your Honor.

THE COURT: No, I understand that. The only reason I'm talking about that, the only reason it tweaked me was that you appear to be making a per se argument, that if the unit price -- I'm sorry, the price of the component unit is agreed upon among manufacturers, is it per se an increase in the price of a finished product and hence impacts the public.

You see, that's all I'm questioning.

MR. SAVERI: But that eventually --

THE COURT: You can tell me in response that at this stage is none of my business.

MR. SAVERI: Okay, but eventually, your Honor, that's going to be a motion either at summary judgment or it's going to be a legal motion that we'll have to argue. But that's not a proper motion for a Rule 11. The Rule 11 are the two standards that we indicated.

MR. SIMON: And just so the answer is clear, your Honor, it's not as black and white as that. But that's the whole point.

THE COURT: Well, that's what sounded to me like what you are arguing.

Okay. I agree --

MR. SIMON: Well, that's our experience.

THE COURT: What?

MR. SIMON: That's our experience in other cases.

THE COURT: Okay.

MR. SIMON: It's not as black as white, I would concede. But that's a factual issue.

THE COURT: Yes?

MR. CORBITT: Your Honor, Craig Corbitt, I am just here for the indirects today. And I appreciate your comments a few minutes ago that you are not going to put any weight on the decision of the indirect

purchasers to enter into this stipulation, and I was just going to say what you just said.

But I wanted to also point out that in the stipulation, in fact the very last sentence of it, paragraph 6, it says "This stipulation and evidence of any negotiations of this stipulation shall not constitute any admission, evidence, concession, or waiver by the indirect purchaser plaintiffs regarding the merits of the Rule 11 motion."

We signed it, Mr. Alioto signed it as counsel.

THE COURT: I understand.

MR. CORBITT: Defense counsel signed it. And frankly, it's improper for them based on this stipulation to be making the arguments that what we did has any bearing on their motion against the direct purchasers.

And if I might say one more thing, and it's not substantive, but simply the point that Mr. Savari made about the reputation of counsel and that that is something, and their history and so forth, that that is something that you should give weight to --

THE COURT: I hate you people making these things personal.

MR. CORBITT: And that Mr. Saveri and all his colleagues on this side of the table and the other

people he mentioned, I know from personal experience is the highest. And I am confident that they would not do anything that did not meet the highest standards of complete...

THE COURT: Okay. All right.

MR. KESSLER: Shall we take a few-minute break --

THE COURT: Yes.

MR. KESSLER: -- before we go up? Because we have been going at it for I think over two hours.

THE COURT: Yeah. And our court reporter...

MR. KESSLER: In deference to our court reporter and to your Honor.

THE COURT: Wait, let me tell you what I want to do.

We'll take a break, then you come back with your closing remarks on this motion, then I want to immediately proceed to the discovery motion.

Who is going to argue the discovery motions?

MR. HEMLOCK: I will, your Honor, for on behalf of the plaintiffs.

THE COURT: Okay.

MR. KESSLER: Mr. Hemlock will.

THE COURT: Okay.

MR. KESSLER: But my reply, your Honor, will

take just a little bit of time since they went on for some time.

THE COURT: Oh, I understand. We want to do that. What I'm trying to say is we are not going to take a break for lunch.

MR. KESSLER: That's fine.

THE COURT: We are just going to take a short break, come back for your reply, and then argument --

MR. KESSLER: Thank you, your Honor.

THE COURT: -- on the discovery motion.

(Whereupon, a recess was taken commencing at 12:14 P.M. and concluding at 12:29 P.M.)

THE COURT: All right. Let's resume, please. Let's resume, please.

All right, Mr. Kessler, you are standing up.

MR. KESSLER: Standing up for this part.

THE COURT: Okay.

MR. KESSLER: Got myself a little time.

THE COURT: Do you want the podium?

MR. KESSLER: No, your Honor.

THE COURT: Okay.

MR. KESSLER: Your Honor, first, again, lots of the argument we heard have nothing to do with the issues on this motion. I want to make that clear so

your Honor knows.

I want plaintiffs' counsel to know, we did not make an argument, we did not make a motion under 28 USC 1927 accusing them of bad faith. And I will state we are not accusing plaintiffs' counsel of bad faith, so if anyone thought that, I thought we were very clear in our brief we were not making that type of claim here.

I also want to make it clear that this is not the time we agree to argue whether they have standing under the Sugar case or the Linerboard case or whether this constitutes whatever the conduct is constitutes a violation under Sony or Catalano. Those are not issues we presented in our motion. Okay. And they are not issues that are here.

And I'm particularly interested because there was so much discussion about LCD. Let's be clear about LCD. And I think Bruce was clear about this, but I want your Honor to be clear about it.

There is no claim in LCD of a unitary conspiracy that fixed the prices of the end products that they have just articulated here. In LCD they argued impact, okay, and they argued that under the Sugar Linerboard cases they have standing to sue for that. Okay.

If they were doing that here, I wouldn't have

this motion. Okay. So they should be doing, asserting what they is asserted in LCD. That's why I am stunned that they are talking about LCD so much, because that's exactly what they are not doing hear here.

Here they made a decision, they made a decision to expand and change the claim in a way for which there is no objectively reasonable basis at all. And I am stating objectively reasonable.

It's interesting, Mr. Saveri said he thought this was an attack on his credibility and it was an attack on his pre-investigation, and he went through that. That's not the basis of our motion, again. Okay. We are not making this a personal inquiry as to what did counsel do and what did counsel not do.

We are going their way on objectively reasonable, okay, that there is no objectively reasonable basis that they had to assert a conspiracy claim here that extended beyond tubes, except for impact.

And on the issue of impact, to say it the way your Honor said it, when asked the question, impact is not conspiracy. There is no such economic doctrine, there is no such legal doctrine, there is no such logical doctrine, there is no such objectively reasonable doctrine. There is no way to say because

they have a basis to allege impact that that gives them a basis to allege a conspiracy with respect to that.

Now, here is the type of problems we have. So Mr. Savari read from the recent joint sentencing memorandum involving SEC. And he said aha, they spoke about the CRT products, which must mean that it includes finished products in that.

Now, the term "products" is defined in the joint sentencing memorandum as we pointed out in footnote 2 of our reply brief. It's defined by the government and SCI -- I'm sorry, SDI, not SEC, sorry, different company. Sorry. SDI. Sorry. It's defined in the memorandum to apply only to the tubes by virtue -- so what -- and this is typical of what we have, is that they take something and they go here is my objectively reasonable basis. It's defined the other way. That's the problem we have, your Honor.

Your Honor heard Mr. Saveri read a lot of the documents. The documents are exactly what your Honor's impression of them are. They are documents. He had one about LCD, that the TVs have to compete with the LCD, so this constrains what the TV prices can be. Therefore, we have to think about how much could we charge for a tube because of what the TV price market is like.

That doesn't show a basis, an objectively

reasonable basis to allege there was a conspiracy involving the TV prices. That's the opposite. It's exactly the opposite, as your Honor said.

And this is completely, you know, you are sitting and it's like Alice In Wonderland because it's the opposite of an objectively reasonable basis.

Think, your Honor, the following in terms of their argument. Let's imagine a world in which there were no integration, okay, and that which a group of tube manufacturers who had nothing to do with television manufacturers got together and imagined an allegation, they are sitting there discussing tube prices, and they said to each other gee, we have to worry about how much these TV companies are going to be able to charge because they are competing with each other and this is what they can charge and they only can absorb so much, they are going to refuse our price increases, especially since LCD competes with CRT, plasma competes with CRT. They are not even these components.

So we have to think about that. Would that mean because they discussed impact there was a conspiracy involving a basis to allege a conspiracy involving the televisions when they wouldn't even make the televisions?

And then they say well, wait a minute,

Mr. Kessler, but the facts are some of you are integrated, says well, how does that charge anything -- change anything? As your Honor pointed out, they don't allege anywhere that all of the TV manufacturers met, they don't even allege that the affiliated TV companies met.

In other words, there is no Chunghwa document to show -- and I'll give what you I mean by that. MTPD is a Panasonic joint venture with Toshiba -- eventually Panasonic today owns it all, but at the time with Toshiba, so it's another company, they made tubes. Okay. They did sell some of their tubes, although not all of them, they sold some of them to Toshiba sometimes, and sometimes to Panasonic, a different company.

There is no allegation in any of those Chunghwa documents that any of those companies met to discuss TV prices, the affiliated companies. The only one who met was MTPD according to those documents that they cite. Chunghwa had no affiliated company.

And as your Honor pointed out, there is no allegation that Sony or Sharp -- Sony is a great example. Sony made its own tube called the Trinitron tube, your Honor may have heard of that. Okay. It's different from a cathode ray tube. None of these

companies even made the Trinitron tube.

So Sony made its own tubes. So it had nothing to do with this whole issue with respect, it wasn't even behind the tubes for this.

Now, the idea that because someone might say Sony is out there competing and it's going to limit what the TV prices are, so that makes it a TV conspiracy to allege? And again, this is -- there is just no objectively reasonable basis.

These arguments started by saying they have killer evidence. They don't have killer evidence. They have no evidence. This is zero. It's a zero, empty box. It was an empty box at the time of the complaint about this claim, and it's an empty box now.

Now, they have a lot of evidence they used, the 400 plus meetings and all that. But they don't have any basis for this portion of it.

And your Honor, here is what I want to get to.

THE COURT: Wait, wait a minute. On this industry structure and all.

MR. KESSLER: Yes.

THE COURT: I -- I have made the argument to plaintiffs' counsel that I didn't think impact equaled conspiracy. But before any final decision were made on the relationship between tubes pricing and finished

pricing, aren't both sides going to have to have some economic evidence and some economic opinion --

MR. KESSLER: On the issue --

THE COURT: -- about cause and effect?

MR. KESSLER: On the issue of impact. The point here is under no circumstances with impact, imagine 100 percent impact, it wouldn't still make it into a conspiracy among the television manufacturers or the tube --

THE COURT: Well, if there were 100 percent impact, would it not be logical that the people meeting over fixing the price of tubes would necessarily be meeting about fixing the price of finished product?

MR. KESSLER: Absolutely not. And -- that's absolutely not. And that's why I gave you my hypothetical.

Let's assume that it is completely no integration at all. Okay. But let's assume that there is going to be a hundred percent impact shown that if they raise the price of their -- of their -- of their tubes, a group of completely unrelated television companies, the victims, if you will, the direct purchaser, in fact the direct purchaser are members of their class, the direct purchasers let's say for whatever economic reason turned out passed it all down

to the consumers, completely passed it down, would that mean that that in any way would be an objectively reasonable basis to show that the component suppliers were conspiring to fix the price of the televisions, which they don't even make or determine the price?

It would mean that their alleged price fixing agreement had a big impact. That's what it would mean. A very big impact. But it would do nothing if a group of automobile suppliers agreed to fix the price of engines, okay, and GM and Ford and Toyota raised their prices. Would that be a price fixing conspiracy of the price of cars? No. It's just impact. That's all that it is is impact. And it doesn't ever raise to this.

And that's by the way what they alleged in LCD. In other words, that's -- that's an allegation that I wouldn't make a Rule 11 motion against. It's what the indirects are now alleging here. And I'm not arguing the fact that the indirects stipulated has to do with whether they have a good faith basis or not, but the point here is that's the correct allegation that they can make without running into Rule 11 about this.

Now, your Honor, I want to go to the timing point, because you know, this is an important point. So I'm reading from the Federal Rules of Civil Procedure, the Advisory Committee notes, on subdivision B and C.

This is --

THE COURT: On Rule 11?

MR. KESSLER: Yes. And this is interesting because your Honor will know that Rule 11 was -- was -- specifically addresses what happens when you make an allegation on information and belief, okay, as opposed to, you know, just state the allegation.

THE COURT: Yeah.

MR. KESSLER: Hey, and in fact, it's interesting because the allegations we are talking on here are not made on information and belief. But that's a different story.

But even if you make it on information and belief, what the advisory committee notes says is the following: "Tolerance of factual contentions in initial pleadings by plaintiffs or defendants when specifically identified as made on information and belief does not relieve litigants from the obligation to conduct an appropriate investigation into the facts that is reasonable under the circumstances." And this is the key point, "It is not a license to join parties, make claims, or present defenses without any factual basis or justification."

That's what we are arguing here, that this is a claim that was asserted without any factual basis and

justification.

And what the advisory committee notes is saying, even if you do it on information and belief, says you have to have some, some modicum factual justification or basis before doing this. And the Townsend case makes it clear it could be just part of a claim, it doesn't have to be the whole complaint, I don't even hear them arguing that any more because the law is pretty clear in the Ninth Circuit through the en banc decision.

Another point on timing, the rules of this court, if I can find that, the local rules of the Northern District of California state as follows, this is local rule 7-8(c), quote, this is on Rule 11 motion, "The motion must be made as soon as practicable after the filing party learns of the circumstances that it alleges make the motion appropriate."

And then they cite a Supreme Court case that's relevant to this, okay, which says district courts can adopt rules, that's the Cooter case, to do the timing.

Now, why did this court, the Northern District say that?

THE COURT: What's the local rule?

MR. KESSLER: It's local rule 7-8(c).

And the reason they said that is because

nobody thinks that the rule of Keegan is what plaintiffs suggested at the beginning, which is that what you have to do is wait until all discovery is done, which could be, in this case could be years later, and then they make a Rule 11 motion back about the complaint that had been filed years before. How can I comply with the local rule? What we did is we did something else. We served discovery.

Now, unfortunately your Honor knows it took a long time to get that discovery answered, but we served discovery, we pursued that diligently, it took months to get it before your Honor after meet and confers and argument, then your Honor order it, and then eventually it took more time for them to comply, as soon as we could evaluate what they had and didn't have, that's when we brought the motion, that's what the rule requires.

And so it can be that somehow Keegan is meant to understand -- and I don't think there is any case that I am aware of, and they point to none, that says since Keegan, and Keegan was rendered in 1996, right? So we have gone now 15 years since Keegan. I have never seen a district court case that I am aware of, at least in the entire Ninth Circuit that has said that what Keegan means is that you can no longer bring a Rule 11

motion until all discovery is done because it may turn out that somehow discovery would back, you know, would -- would support it there. This makes absolutely no sense. It would defeat the whole basis of the rule.

I also would note that post Keegan, the Ninth Circuit ruled in the Barber case that we cited, 1998, it said there you can't wait until after the summary judgment in which the criticism was the reverse, said you got to bring it early enough that -- that the parties can react to it and avoid -- that was the whole purpose of safe harbor. Safe harbor was the idea someone does something that you think has a Rule 11 issue, give them 21 days to cite it before the adverse effects occur. So it's safe for both sides. And that's the only thing that makes sense in terms of this.

The Chunghwa admissions, I would submit, your Honor that these are first of all, they are relevant. And Mr. Simon's arguing the wrong point. Okay. The issue is not whether they could be admissible at trial against the plaintiff. We are not here in a trial setting where you consider admissible evidence. What you are looking at is did they have an objectively reasonable basis for making this particular claim.

Their response was we had this massive proffer from Chunghwa and all these documents. It is relevant

to your inquiry to see what Chunghwa responded by the way under penalty, because these are verified answers. I know they seem to impugn the person who signed them, but these are verified on behalf of the party, and you can absolutely rely upon these to make the determination as to whether they had an objectively reasonable basis.

But your Honor has to assume Chunghwa is not lying now in these verified answers, so this has to have been the same information that they would have gotten from Chunghwa.

And by the way, what I didn't hear them say when Mr. Saveri read his notes, I didn't hear in any of his notes that anyone from Chunghwa told them there was a conspiracy that fixed the prices of televisions or monitors or affected, you know, or, you know, and set the prices or did allocation for that. In other words, that wasn't in any of his notes of his conversations with Chunghwa.

All that was there at least that I heard was the same thing the documents say, which is that they took into account sometimes the prices in deciding what they could do with respect to tube prices.

So again, I think, your Honor, these are very relevant and they go, you know, to your determination today as to whether there is an objectively reasonable

basis or not.

Now, I also want to say, your Honor, the issue of internal transfer prices they discussed about. Okay. Their argument was that there was an indication by the two companies that that would apply, for example, to a sale by MTPD to Panasonic, let's say. That's what they are calling an internal transfer. Well, I don't understand how that gets them to -- to -- to a monitor or a television conspiracy. Let's look at that.

MTPD was a joint venture between Toshiba and Panasonic. So their allegation is as a tube company, MTPD was agreeing to prices for everyone, including a company for which it had an affiliation. So let's give them that that's their allegation, that the price was set to Panasonic as a purchaser.

What does that say about what price Panasonic's going to charge as a television company? Panasonic, which is a different company with a different ownership, is going to then have to decide whether it's an affiliated company or not, this is how much I paid, so it may have some impact, it may not, depending on the competition in the television market.

No matter what, it's just an impact issue. Again, it does nothing to get them, whether it's a -- whether it applied to those related company sales or

not, doesn't get you to a conspiracy at the end, because for that they would have to have an allegation that somehow the TV companies themselves had some discussions among themselves about TV prices or the computer monitor companies themselves had some discussions about computers. There is no allegations of that. There is nothing in the documents about that. There is nothing in the basis for that. So again, they just can't add something for which there is no basis in that way.

Okay. Next point. The statements about all, when what Mr. Simon's argument is is as follows, if I understand it, if they had discussions of TV prices and if it had an impact on TV prices, then that's enough for them to allege a conspiracy regarding the TV prices as well. That's how I understand both unitary, both the CRTs and the TV prices.

I would say, you know, it is not only reasonable to reach that conclusion, that just like you can apply common economics on a Twamly motion, which as you know the courts do, that they will say well, this doesn't make any economic sense, I can't credit that as being plausible, you can -- and objectively reasonable -- say what they had a basis to do is to allege what they allege in LCD or what the indirects are now alleging and that that's the case we should be

prosecuting so that the parties are not going to incur, it can't be the rule that you have to incur without any objectively reasonable basis class action defense, expert analysis, all of these different things when there is no objectively reasonable basis for their...

Finally the statement about the expert, that's what I want the mention. We heard that they had an expert look at this. If they want to submit that to your Honor in-camera, I have no objection to that. That's actually what the rule says. It says they are not required to share it with us. If they want to rely upon it, they could submit an in camera to your Honor.

I am 100 percent confident that their expert did not say based on whatever they told him that there was an objectively reasonable basis for a conspiracy involving televisions and monitors based on, as Mr. Saveri said, looking at the government investigations, says and looking at the market facts, all of which related to CRT. When he talked about, for example, a homogeneous product and concentration, that's CRTs where price is the only element.

Your Honor, as a TV purchaser, could there have been a market fact that televisions are homogeneous? Could there have been a market fact that price is the only element in consumers purchasing

televisions? Could there have been a market fact that the television industry is concentrated, given the vast number of sellers of televisions? No, there is no such fact.

And that's why I invite, I welcome and I implore him to give you in-camera whatever his expert said. It won't say that. I am quite confident it won't say that.

And so, your Honor, the end of the game here is at a minimum, at a minimum this case should be -- result in a Rule 11 finding, not bad faith, your Honor doesn't have to make any finding of bad faith, just on objectively reasonable that the allegation should be limited to essentially what they did in LCD and to what the indirects are doing here, we'll move forward with the case then.

All the other issues -- Sugar, Sony, Catalano -- those are issues for another day. They are not issues for today. Those are issues, you know, whether or not they have standing or whether or not they don't have standing, that's not for this motion. This is simply to define what was a proper allegation they had a basis of in this case.

I think Mr. Simmons may want to say one more thing. Otherwise unless your Honor has questions, I

think I have covered it as well.

THE COURT: Thank you.

MR. SIMMONS: Two things, actually, very brief, your Honor. Thank you for all the time you have afforded everyone in this room.

First thing, let me take the expert point. We cite this in the brief, and the Supreme Court has said it many times, expert testimony -- in the Brook Group case, expert testimony is useful as a guide for interpreting facts, it's not a substitute for them. This motion is shining a spotlight on what facts they had. I still think is it a zero on the finished product.

Second point, very brief, your Honor. Mr. Simon in virtually every hearing lovers to trot out the Sugar case, trot it out in what it purportedly shows. Let me read this briefly, a passage from their opposition on Sugar and identify for you the slight of hand they are making for the court.

They say on page 23, quote "Finally, as plaintiffs have explained in their supplemental interrogatory answers (DPP's response to LGE at 66-67) a conspiracy as to CRT dollars is equivalent to a conspiracy as to finished products." Period. Close quote. They are equating the two.

THE COURT: I'm sorry, what are you reading from?

MR. SIMMONS: Page 23.

THE COURT: Of what?

MR. SIMMONS: Plaintiffs' opposition to the Rule 11.

THE COURT: Page 23?

MR. SIMMONS: Uh-huh. Plaintiffs' memorandum of points and authorities.

THE COURT: Yeah, I have got it. Now, where are you reading?

MR. SIMMONS: Page 23.

THE COURT: Yeah.

MR. SIMMONS: Line 6, your Honor. You see beginning "Timely"?

THE COURT: Yeah.

MR. SIMMONS: Okay. I just read that first sentence.

Then they cite Sugar and they have the quote. "Plaintiff is a direct purchaser and therefore entitled to recover the full extent of the overcharge."

Let me say a word about Sugar. Mr. Simon loves to always hold that case up.

MR. SIMON: I thought we weren't being personal.

MR. SIMMONS: Well, I'm just referring you to --

THE COURT: Okay. All right. Come on.

MR. SIMMONS: Counsel likes to hold up Sugar. Sugar was a case where the question presented to the Third Circuit, whether -- whether you agree that they came out with the correct way or the incorrect way on the question presented, I believe they came up with the incorrect way on the question presented.

The question presented was the following: Whether a plaintiff that purchased candy from a company that made both refined sugar and candy had standing as a direct purchaser where the conspiracy extended only to refined sugar, the input itself.

Sugar proves our point. No one is -- proves our point. The third circuit did not say that, well, there is a conspiracy both as to refined sugar, a conspiracy as to refined sugar is equivalent to a conspiracy as to candy. That's not what they said.

They said that if a company made both, the refined sugar, that was the subject of the price fix, and the candy, and the plaintiff purchased the candy, the Third Circuit said you are not barred under Illinois --

MR. KESSLER: And that issue isn't being

argued today.

MR. SIMMONS: And -- Mr. Kessler, if I could just finish -- I happen to believe that rule of law is incorrect and many circuits have disagreed with it. But counsel has made our point. The Third Circuit said that the conspiracy is about -- is about refined sugar, the input. That's what we are saying here. If there is a conspiracy here, it's about the tubes.

They did not say ipso facto it's a conspiracy as to candy. They said the opposite.

And I'll rest with that.

THE COURT: Okay. Anybody else wish to speak for defendant?

Plaintiffs, you want --

MR. LEHMANN: Can I take two or three minutes max?

THE COURT: I'm literally going to give you three minutes.

MR. LEHMANN: Okay. Going to be quick.

Let me sum up what we told you that we had when we filed this complaint.

THE COURT: I'm sorry --

MR. LEHMANN: We had the oral reports from Chunghwa proffer on documents showing discussion --

THE COURT: Yes, that's right.

MR. LEHMANN: -- of pricing of products containing CRTs.

THE COURT: Yeah.

MR. LEHMANN: And the interrelatedness of how prices were set for CRTs and those products.

We had the expert analysis that's been discussed, we had the evidence of vertical integration of the seven defendant groups that we talked about, and which Judge Conti said it is economically plausible that affiliated companies would wish to see any price increases in CRTs pass through to the purchasers of CRT products.

We had the comments of the DOJ in February 10th, 2009, shortly before we filed the complaint regarding the indictment C. Y. Lin, and again Judge Conti said when he looked at that press release that when announcing the indictment the acting assistant AG in charge of antitrust division suggested the conspiracy extended beyond CRTs themselves. Our interpretation is a reasonable one.

We had evidence of JFTC proceedings that found Panasonic, Toshiba, Hitachi fixed resale prices of CRT televisions.

We had evidence of the economic structure of the market and reports that indicated that CRT tube

prices determined CRT television prices.

And we had evidence from what happened in LCDs which was a very similar industry and a very similar conspiracy where the complaint was sustained. And what did that complaint allege, your Honor? It said the class was those who directly purchased a TFT LCD product in the U.S. from any defendant or coconspirator, and a TFT LCD product was defined in that complaint as including TFT LCDs and products containing them.

The totality of this we think establishes that the complaint was not objectively baseless, baseless with respect to the claims involving products containing CRTs.

But even if you disagreed with us there, it certainly establishes a reasonable inquiry. And if we win on that point, they lose on their motion.

One last point, and then I'm done. Timing. The defendants neglect to cite the advisory committee notes of Rule 1 which state "In the case of pleadings, the sanctions issue under Rule 11 normally will be determined at the end of the litigation." Where did the advisory group get that? They got from it Supreme Court's decision in 1990 in Cooter and Gell where it said exactly that. The time, they want to make a Rule 11 motion is to defer it until we deal with summary

judgment.

That's what the Supreme Court said, that's what the advisory committee has said. And we think your Honor is bound by that.

MR. KESSLER: Your Honor, just one --

THE COURT: I am confused.

MR. KESSLER: Yes.

THE COURT: Not confused. I am hearing two different things. I heard him say that LCD did not involve conspiracy in finished products. I think what he just read indicated it did.

MR. SIMON: The class was certified for two subclasses: Finished products and components. And I think there were several hearings. I have explained what my understanding of the allegations in this complaint are. And I think your Honor could look at the LCD rulings which we cited to you and could read the allegations thereunder compare the two.

THE COURT: Well, I would have to do the homework.

MR. SIMON: No matter how much Mr. Kessler tries to argue it and I try to argue what I'm arguing, it seems like we are never going to have a meeting of the minds, and I would prefer that your Honor look at those cases and I think it will be self-evident.

But at the time we filed the complaint in the this case, we had the 2008 decision of Judge Illston in LCD sustaining that complaint with those allegations.

THE COURT: Well, but what, a Rule 12 motion?

MR. SIMON: Rule 12 motion.

THE COURT: Well, that doesn't get eye anywhere. I mean --

MR. SIMON: But the fact is, the question is not whether it gets us anywhere, but whether that's part of our reasonable inquiry. And under an objective basis we could say that considering the law that existed in the circuit at the time we filed the complaint, we had a good faith basis for proceeding here.

MR. KESSLER: Your Honor, this --

THE COURT: I don't follow.

MR. KESSLER: One minute. Because --

THE COURT: I don't follow that.

MR. KESSLER: Here is -- here is what they are conflating. They are conflating Rule 11 and Rule 12. It is true that Judge Conti ruled here that the allegations they set forth passed Rule 12. We don't disagree with that. And Judge Illston said that.

That tells you nothing about in either case whether there was an objectively reasonable basis based on a reasonable inquiry to make the allegations were

there, Judge Conti didn't examine that, Judge Illston didn't examine that. So we know nothing.

And I am listening to Mr. Simon very carefully, who is a great lawyer and I praise him, and an honest lawyer. He is not going to tell your Honor in this record that they are alleging in LCD, in that case, that there is a unitary conspiracy to fix the prices of the finished products, because he knows that's not what they are doing.

There is a direct purchaser class and an indirect purchaser class. It is true that they are an impact, you know, they are an impact in LCD letting that case go forward, but not based on the type of allegation made here. Mr. Simon knows that, and to his credit he hasn't said anything else.

He's done a very effective job to say a lot of other things, but he won't say that.

THE COURT: Okay. Okay.

Matter stands submitted?

MR. SIMMONS: Yes, your Honor. Despite the fact I have a lot more to say.

THE COURT: Pardon me? Oh, I'm sure.

MR. SIMMONS: Especially on the evidentiary point.

THE COURT: Okay.

MR. SIMMONS: But I won't say anything.

THE COURT: All right. Here we are. Okay.

Now let's turn to the plaintiffs' motion by the direct purchaser plaintiffs against Panasonic, MT, and it started out against LG also, but I did receive a letter indicating that the plaintiffs and LG have agreed on that, so they are out of it.

Now, the motion itself, the motion of April 20, what does it ask for? At the very end it says plaintiffs' motion to develop discovery with respect to CRT products should be granted.

Now, at that point, then, I'm saying to myself well, that's the issue we have got in the Rule 11 motion, and plaintiffs want discovery on that issue. And it's not necessary for me to go through and parse out the specific questions that were asked or the specific demands made and see whether that's been complied with, but just deal with the subject of CRT products.

BY MR. R. ALEXANDER SAVERI

MR. SAVERI: If I may, your Honor, address two things you have talked about, first of all.

THE COURT: Yeah.

MR. SAVERI: The first thing is you are correct, the initial motion was against two defendants,

LG as well as the Panasonic defendants.

THE COURT: Yeah. Right.

MR. SAVERI: The reason we have dropped the motion against LG is because we have worked that out with them.

THE COURT: Yeah, I understand that.

MR. SAVERI: And they are producing finished product documents on a custodial basis.

What we are asking for now is that the Panasonic defendants be treated just like all the other defendants, that they produce finished product discovery on -- on a custodial basis just like you ordered against Hitachi, just like LG has agreed to do, and just like every other defendant has agreed to do, and your Honor has ordered it against Hitachi.

Where we are with Panasonic, and I think this is very clear, your Honor, originally -- let me back up, let me say one thing.

With Panasonic we have agreed on the custodians. It's done. We have 53 agreed-upon custodians. There is no longer a dispute of who or where those people are or where they will go look for documents.

And as your Honor said in his previous hearing on the custodian, this issue, the issue of going on the

custodial basis will take in this overarching objection that we started almost a year ago.

THE COURT: Yeah. Yeah.

MR. SAVERI: Which was time period, the --

THE COURT: I understand.

MR. SAVERI: And the finished product.

THE COURT: I understand.

MR. SAVERI: And so by going custodial, that will take out the big undue burden issue for defendants and resolve those overarching objections so that we could get to the responsive material that plaintiffs are seeking.

And we have worked that out with everybody, your Honor ordered it as against Hitachi.

But more particularly --

THE COURT: Well, have you agreed with them on custodians, leaving the issue of subject matter aside?

MR. SAVERI: Say that again? I'm sorry, your Honor?

THE COURT: Have you agreed with the respondents here, Panasonic --

MR. SAVERI: Yes.

THE COURT: -- and MT about custodians?

MR. SAVERI: Yes.

THE COURT: Who they are?

MR. SAVERI: Yes.

THE COURT: How many there are?

MR. SAVERI: 53, your Honor. We have the names.

THE COURT: Okay.

MR. SAVERI: All 53.

And I want to make one point very clear here, your Honor, which is when this meet and confer process started with Panasonic, they initially agreed to produce finished product discovery on the custodial basis. There was no undue burden at that point.

They changed position 180 degrees because your Honor ordered us to answer the contention interrogatories. When we had to answer the contention interrogatories, Panasonic withdrew its position and said we will not produce finished product discovery until -- and until we see your discovery and until we are satisfied with your discovery. That then derailed all the finished product discovery against Panasonic.

And that exact issue came up before your Honor with Hitachi. And as your Honor may recall, your Honor instructed all parties that one party's discovery is not conditioned on another party's discovery. That's the whole point. Your Honor wanted to move discovery against all parties.

So one party can't say well, let me see what you produce and then only if I'm satisfied with that well then I agree to respond to your discovery. That issue was resolved.

And that objection made by Hitachi you overruled, your Honor, that's the same objection being made by Panasonic.

There is two -- there is two objections that they are holding up, your Honor, given finished product discovery. One, we haven't made a prima facie case. We haven't made a showing. We haven't made a showing there is any evidence of a conspiracy in finished products, therefore you don't get any.

Your Honor, we cited that, the transcript where you overruled that. We held that. There is no requirement of a prima facie showing.

The second one is burden, undue burden. But that was also overruled by your Honor and we said we are going to go custodial base. And the whole purpose of the custodial base was to limit them having to do from the top of the roof down to the basement to go search everybody's files for responsive material.

And it was to limit it to a set amount of agreed upon custodians. And we have done that. We have done that amount with Panasonic. We have agreed on

those people.

And second of all, that undue burden argument here is a disguise, your Honor, because in fact they agreed to produce finished product documents originally and then took a 180 degrees because we had to answer the contention interrogatories, your Honor.

So their undue burden argument or burden argument at this point is just completely false. It's our position it's just completely false. We agreed with the custodians and they should produce just like you ordered against Hitachi, just like LG is agreeing to produce, and just like every other defendant here has agreed to produce, finished product discovery.

One last point too, your Honor, is this. For them to make a burden argument, they have to come up with some showing of it, some declaration "We have cited to the law" in there, some declaration, some affidavit of the cost of what it will do, this really undue burden. They made none here, your Honor, because there isn't any.

In fact, Mr. Kessler's letter, I think we have attached it as Exhibit 12, he says "We will now proceed on a finished product discovery on a custodial basis," but he preserves his objection.

Then later when your Honor ordered the

contention interrogatories, "Oh, no, we got to stop, we have to wait for your discovery and then we will decide whether we will give it."

The fact of the matter here is there is no undue burden on behalf of the defendants. We are not required to make a prima facie showing. And in fact, we have agreed on the custodians, and we have agreed on the people that they are to search, and Panasonic, each of the Panasonic entities should produce finished product responsive material just like the other defendants.

Thank you, your Honor.

THE COURT: All right. Anything else from the plaintiffs?

All right.

MR. HEMLOCK: Thank you, your Honor, Adam Hemlock for the Panasonic defendants. As a threshold matter, your Honor, obviously if the Rule 11 motion is granted, this should all go away.

The specific nature of the discovery that we understand they are seeking, and your Honor is right that their motion brief in that regard, the letter is a little unclear about exactly what it is they are talking about when they say they're moving to compel production of CRT product discovery, we -- we have interpreted it to mean that they are specifically looking for document

litigation information relating to the alleged CRT products conspiracy.

THE COURT: That's --

MR. HEMLOCK: Now, I'll get in a moment to the issue of unitary versus unitary versus non-unitary and so on, but that is the scope of the discovery that Panasonic is objecting to produce.

Even if the Rule 11 motion is denied, your Honor, for reasons I'll explain in a moment, we still believe that the motion to compel is -- should be denied as well, that not only are what they seeking is burdensome, but we don't believe there is any established likelihood that the discovery they are seeking exists, and --

THE COURT: Seeking what?

MR. HEMLOCK: The discovery that they are seeking actually exists --

THE COURT: As it says --

MR. HEMLOCK: -- in discovery.

MR. SIMON: Okay.

MR. HEMLOCK: And furthermore, with respect to this unitary conspiracy about which we have heard a lot today, frankly we are already producing documents that would be directly relevant to that.

Of course the Panasonic defendants deny that

that discovery -- that that conspiracy exists, but they have the list if you look at the categories of documents in discovery that we have agreed to produce, it would be directly relevant to such an alleged conspiracy.

If you look, your Honor, at the plaintiffs' positions --

THE COURT: Now, wait a minute, wait a minute, wait a minute. I read your opposition as saying that you have produced the documents under duress, both CRTs and finished products.

MR. HEMLOCK: Right.

THE COURT: If it's within a document, then says both, you produced it.

MR. HEMLOCK: Right.

THE COURT: So the only thing you are not producing then are those documents which might be responsive to a call of the discovery that simply talks about finished products.

Is that the --

MR. HEMLOCK: That -- that -- well, to be more precise, your Honor, that would be searching for and producing documents that relate solely to the finished product element --

THE COURT: Well, that's what I mean.

MR. HEMLOCK: -- of their alleged conspiracy.

THE COURT: Yes, well, that's what I mean. That's what I mean. Okay.

MR. HEMLOCK: Yes, you are correct.

THE COURT: All right.

MR. HEMLOCK: So the briefing, your Honor, that the plaintiffs have put in, they talk a lot and refer today about this prima facie showing, and they talk a lot about how the complaints set forth their conspiracy theory, and then there was a motion to dismiss, and those motions were denied. And now they believe that they are entitled to all discovery based on whatever they had in the complaints.

It's a little bit of the flip side of the Rule 11 which is your Honor is entitled to actually not just look at what was -- what existed at the time of the complaints, but up until where we are now.

And the big missing picture that they don't address in their brief is that we have their interrogatory responses which show clearly, as Mr. Kessler argued today and Mr. Simmons argued, that they don't have a legitimate Rule 11 basis for the finished products conspiracy that they are alleging.

And you know, I won't go through it again, but there are the interrogatory responses, the Chunghwa documents that proffer all of that stuff we have heard

about.

And when you look at all of that, what it tells us is that they don't have anything to point to to say that there would be those categories of documents in Panasonic's files.

But they nevertheless want us to go search through all these custodians' files and look for them, and it's the Panasonic defendant's position that that's unreasonable and unduly burdensome.

THE COURT: Well, what do you think you have agreed to by agreeing upon, what was it, 53, 83 custodians?

MR. HEMLOCK: Well, we -- there is no question we agreed with plaintiffs' counsel, we have agreed on their custodians. The question is what we looked for within the files of those custodians.

I get the sense that plaintiffs' counsel believe that -- that agreeing on custodians is kind of a panacea, that once you have agreed on the custodians --

MR. SIMON: Well, you see --

MR. HEMLOCK: -- it's all well and good.

THE COURT: -- that's kind of the way it develops here when we started out arguing about a whole lot of things such as timing and subject matter and things like that came up at a hearing like this where

two sides seem to be agreeing. If you agree on custodians, you get agreement on that, that would subsume all the other objections.

MR. HEMLOCK: Well, your Honor, the problem is that even though you pick those 53 custodians, and even beyond the custodians we are producing data, we are going to be searching through some central files, as Mr. Kessler pointed out earlier, there are all sorts of burdens relating to language and so on.

THE COURT: Oh, I'm sure.

MR. HEMLOCK: Even 53 custodians is going to be a material burden.

An as your Honor knows through the procedure as how discovery gets done these days, we don't take those 53 custodians and look at every single document they have in their files, we use some search terms, we use other methodologies --

MR. SIMON: Sure.

MR. HEMLOCK: -- to cut it down.

MR. SIMON: Sure.

MR. HEMLOCK: If you had to look at every single document of all 53 of those custodians, it would be an unreasonable burden, and frankly, we would have never agreed to it.

But we anticipate that we are going to take

that, the volume of the 53 custodians, whatever it is that results, use some search terms, use some keywords, and when we think about what is a reasonable burden that we are willing to accept or not, it's based on what's going to come out at the end of that process, not just, you know, the volume of 53 and whether that alone is too much or too little.

But I think, your Honor, an additional point that's really important to keep in mind here is what it is that we have already agreed to produce. So as you mentioned, we make the point in our opposition brief that they have alleged a unitary conspiracy, and then with respect to, you know, the request, let me list some requests and I'll say with respect to these we have agreed to produce the documents if they address both CRTs and CRT finished products.

And we have heard today about meetings, you know, CRT tube meetings where finished products were discussed. So they also mention in their interrogatory responses that there was a single set of meetings.

Bearing that in mind, we have agreed to produce documents produced by the defendant, by the Panasonic defendants to the DOJ, communications between competitors, meetings between competitors, detailed sales data, inventory levels, business plans, planning

analyses, documents relating to market shares, production, capacity, sales, shipments. The full list is in the brief and I won't bore you with it.

But the point is, if you take their assertions at face value, that there was a single set of meetings with respect to both, and we have agreed to produce all these categories with respect to CRT tubes, and CRT finished products were discussed at those meetings, the impact, all of that stuff, then what we have agreed to produce, frankly, your Honor, is to capture what it is that they are looking for.

Now, what they want us to go beyond that to do is to find some document, you know, if it exists, where this, the finished product element of the alleged conspiracy was discussed on kind of a standalone basis.

And let me provide one clear example of why that would be burdensome. Our client, MTPD, one of the companies that we have talked about today, was a tube maker. All they do all day is they do out and meet television manufacturers and try to sell them product. Now, if we had to go through all of that stuff, all of their e-mail communications --

THE COURT: But hasn't that been answered by your already identifying the custodians you are going to search their files?

MR. HEMLOCK: Well, what it identifies is whose files we are going to have to look for for those documents.

THE COURT: Yeah.

MR. HEMLOCK: But to have to go through thousands of innocuous documents where some guy says "Oh, I met with, you know, the TV division of so and so company and, you know, we negotiated a price or we have to supply by so and so date," we are going to have to go through all of those documents because those are meetings between a TV -- a tube manufacturer, in this case us, and a TV manufacturer, and that are going to be entirely innocuous.

THE COURT: So after you have scanned the document onto your computer software system, okay, you have designed your search terms, you want it to be in such a way that anything pertaining to CRT finished products that doesn't include another way to catch it, another hook on the definition --

MR. HEMLOCK: That's actually --

THE COURT: -- doesn't get selected.

MR. HEMLOCK: There are actually two -- well, you raise a good point.

There are really two complexities to this. One is coming up with search terms that would -- you

would have to capture certain -- you would have to use search terms that capture all the communications between MTPD or our tube business and its customers. And to do that, you are going to have to come up with search terms that not only would capture that, but would have to be even broader, we would have to look through even more nonresponsive stuff.

But secondly, once you use those search terms, your Honor, all those documents get pulled up and then you have to have an army of reviewers going through all of them. And I just picture all these reviewers sitting there reviewing tons of innocuous communications between the company and its customers with, you know, when is it we have to bid for the next round or how much is the price or how do we need to change the tube to satisfy you and all of that stuff, none of which is going to have anything to do with, you know, this alleged TV conspiracy, which as Jeffrey pointed out, we just think there doesn't seem to be any evidence that it exists and they are asking us to undertake this huge burden to look for this.

I mean, you know, we use the term "fishing expedition" in a lot in these types of case. I honestly believe this is really the appropriate example where four years into the case we are just not seeing any

evidence of this unitary conspiracy, but they want us to dig around and look for it.

And that's what we object to.

THE COURT: But your search is going to include any document that pertains to CRTs and finished products, and finished products.

MR. HEMLOCK: Correct. Correct.

THE COURT: Okay. Counsel?

MR. KESSLER: Your Honor, if I could just say one thing?

THE COURT: Yeah.

MR. KESSLER: Is reason for this is, this is the way to look at it, we will put in all the CRT search terms. So if it refers to CRTs, it's automatically going to get picked up with all CTR competitors, whether or not it has something about finished products.

THE COURT: Sure.

MR. KESSLER: What we think is unduly burdensome for these custodians is to pick up documents simply because it only mentions a finished product and has nothing to do with a CRT except for things like say price data and -- you know, in other words, we'll give them prices of televisions and all that, that's a separate, that's not a custodian issue, that's just a pricing list data, that's a separate thing.

But the burden here is so that if you have a custodian who -- who -- who did something with another television company having nothing to do with CRTs, it will get picked up. And if it gets picked up, it could be hundreds of thousands or a million more hits which we have to review. And that's -- that's the burden. That's the burden. For the same custodian.

Because you remember we are also talking about a period of, you know, they want to go back 18 years, and they want to do this globally.

So it's not like we are talking about oh, let's just do the last three years of somebody's hits. Any time you add this way, the expansion becomes quite gigantic.

MR. RICK SAVERI: Your Honor, if I --

MR. HEMLOCK: I'm sorry, I just have a couple more points.

MR. SAVERI: Absolutely. Just let me know when you are done. We'll pick it right up.

MR. HEMLOCK: Your Honor, counsel for plaintiffs made a point in their brief and also today in oral argument about a purported flip-flop, that they claim that we had agreed to produce finished products, conspiracy documents --

THE COURT: So you entered into a stipulation

or an agreement, if it wasn't an agreement, I'm not concerned with it.

MR. HEMLOCK: Well, if I just may point out that I believe what they are relying on is a letter that was sent by Mr. Kessler in September 21, 2010, and all he said, your Honor, is that we were willing to consider proceeding that way. We were willing to discuss it. We never agreed to it or committed to it.

Your Honor, we frankly agree that once it was clear that we couldn't get responses to the interrogatories and we wanted to see what those responses were, and your Honor, when you ordered them to respond to those interrogatories, you expressly pointed out in your order that the responses would be directly relevant to the scope of discovery in the case. And you know, we -- we took you up on that.

THE COURT: Uh-huh.

MR. HEMLOCK: And we expressly told them that we felt that was directly relevant. We weren't willing to undertake this extra burden to look for these extra documents unless we thought there was a Rule 11 basis to do so, and that's why we are where we are today.

THE COURT: Uh-huh.

MR. HEMLOCK: Thank you.

MR. SHAPLAND: Your Honor, Eric Shapland on

behalf of LG Electronics.

THE COURT: Yes.

MR. SHAPLAND: I just want to make one point. I don't want you to be left with a misimpression that we have a final agreement.

THE COURT: You --

MR. SHAPLAND: I don't want you to be left with a misimpression that we have final agreement with the plaintiffs with respect to finished products, the scope of finished product discovery. We still stand behind our March 21st letter to you which describes the implications of plaintiffs' inadequate discovery responses on the scope of finished product discovery.

And we will stand by those principles in that letter to the extent that we are sitting down and making decisions about who should be a custodian on the finished product side of the case.

THE COURT: Okay.

MR. SAVERI: Your Honor?

THE COURT: But to the extent you agree on custodian, what are you doing about finished products? You are producing?

MR. SHAPLAND: Right.

MR. SAVERI: They are producing finished product responsive material.

THE COURT: Finished, if you agreed on the custodians.

MR. SAVERI: Right.

THE COURT: I guess you can finish discussions.

If you reach an agreement on custodians you are agreeing that your discovery, your production by those custodians will include finished products information.

MR. SHAPLAND: That's right. We are taking a different approach to managing the --

THE COURT: No, I understand. I understand.

MR. SHAPLAND: You know, it's costing upwards of $100,000 with going through custodians' documents.

MR. SIMON: I understand.

MR. SHAPLAND: We have the same burden --

THE COURT: Each company has its own reasons for taking a specific position. I respect that.

MR. SAVERI: If I may, your Honor?

THE COURT: Yes.

MR. SAVERI: I'd like to pick up with where Mr. Kessler left off and saying that the burden of going into these custodians to look, there has been no showing made, your Honor, no declaration of costs, time, anything as to that burden. There is just a blanket

claim.

Your Honor, on behalf of plaintiffs, there will be no -- it will be very easy for them to get and review that material. It's the same showing, your Honor. They haven't made any on that point.

I also, it's like Yogi Berra, it's deja vu all over again, your Honor. And I can't believe they said it, and I wrote it down. And the position of Panasonic is if they don't believe the conspiracy exists, we don't get any discovery.

THE COURT: No. Okay.

MR. SAVERI: That's what they just said.

THE COURT: No, I understand that.

MR. SAVERI: All right. And we have a sustained complaint, your Honor. And the whole purpose of it --

THE COURT: I understand.

MR. SAVERI: And I want to make another point, your Honor. The whole purpose of, your Honor, we went to this custodian based approach, is to get at the issue of the finished products. What they --

THE COURT: Well, among others.

MR. SAVERI: Among other things, your Honor, correct.

But what they are saying now is when they get

these custodians, these 53 custodians and they collect the material, when and if they find material of Matsushita, Panasonic or MTPD talking only about televisions, fixing prices on televisions, they are going to exclude them.

THE COURT: Yeah, I think that's right.

MR. SAVERI: That's what they want to exclude, your Honor.

THE COURT: Right.

MR. SAVERI: That's why we are moving to compel.

THE COURT: I think the thing that leads him to that result is the fact that you have now defined the conspiracy as being a unitary conspiracy involving both products.

MR. SAVERI: Well, it does involve both products, and that's just it. That's just it.

And one thing on that, your Honor, he talks about MTPD. MTPD. MTPD, your Honor, is a joint venture between Matsushita and Toshiba. But during the conspiracy, MTPD didn't exist the entire time. Matsushita, the tube and TV company, attended. Toshiba attended. LG Electronics. The tube and TV companies. Same companies going to the conspiracy, conspirators going to conspiracy meetings.

Then seven years down the road, oh, let's form a joint venture where we spin off our tube manufacturing facilities, we both own it, and we buy the product. That's what they are doing here, your Honor.

So actually, the TV and tube company, Matsushita Electronics is attending the meetings. TV and tube.

So that's why we want that material, your Honor, of the discussions regarding if it's only TV related. It's not just tube people attending, your Honor. They are both. It's a company that does both products, your Honor.

It's a very, very relevant thing.

THE COURT: All right.

MR. SAVERI: The other point here where they are making is that it will be very difficult to look for the material that because we sell it to our customers, that MTPD would sell it to customers. Well, the material the customers are selling it to are the other coconspirators that are here before you, your Honor. That's why we want it. We exactly want the discussions of when Matsushita or MTPD talks to Hitachi about buying tubes. That's exactly why we want them to look at it. Because they said "Hey, by the way, we just got back from the conspiracy meeting, we've got to set TV prices

at X." That's why they want them to talk to their customers. That's exactly the point. They want to exclude that.

So that once again, your Honor, all the other defendants are on board. We feel here with Panasonic --

THE COURT: Well, no, yeah, I don't pay much attention to that because every company can have its own reasons for agreeing or not agreeing on the work its got to do to produce. And somebody may say well, we have got so little, what could possibly be there, we are not going to disagree at all, we are just going to crank the computers out, check all the e-mails, and produce everything. It's easier than sorting. Others may say no, that burden is too big, it's too heavy, too much to do.

So everybody may have their own reasons.

MR. SAVERI: That's correct, your Honor.

But there still has been no showing as far as burden here.

MR. SIMON: I agree. I agree there has not been a factual showing of burden. Okay.

MR. SAVERI: Thank you, your Honor. Enough said.

Thank you, your Honor.

MR. HEMLOCK: May I just make one more point,

your Honor?

THE COURT: Sure.

MR. HEMLOCK: Sorry. I would just note, by the way, that all of this is also in the context of what we have already agreed to produce. We have produced already, your Honor, tens of thousands of documents. I believe we produced 5,000 documents today. We have -- I'm sure at the end there will be hundreds of thousands, again all directly what we believe is addressing this alleged unitary conspiracy.

So I can say with confidence there will be a lot of stuff that the plaintiffs will be receiving that will also be in that bucket.

MR. SAVERI: Yeah, but "a lot of stuff" is not relevant stuff.

THE COURT: I know, I know. We could package up the New York telephone directory and send it to you and it would be --

MR. SAVERI: It would be a lot of pages, your Honor.

THE COURT: -- 200,000 pages and 100 million line items.

But you know, I understand.

MR. SAVERI: I appreciate it, your Honor.

THE COURT: Come on now.

MR. SAVERI: It's tough to hear, your Honor.

THE COURT: Okay. Submitted?

MR. SAVERI: Submitted.

MR. KESSLER: Thank you, your Honor. We appreciate your time very much.

THE COURT: Thank you.

MR. KESSLER: Thank you for your patience.

(Whereupon, the proceedings were adjourned at 1:31 P.M.)

--oOo--

CERTIFICATE OF REPORTER

I, COREY W. ANDERSON, a Certified Shorthand Reporter, hereby certify that the foregoing proceedings were taken down in shorthand by me, a disinterested person, at the time and place therein stated, and that the proceedings were thereafter reduced to typewriting, by computer, under my direction and supervision;

I further certify that I am not of counsel or attorney for either or any of the parties to the said proceeding, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

DATED:

_____

COREY W. ANDERSON, CSR NO 4096